MISSISSIPPI CODE 1972
Annotated

Taxation and Finance

(§ 27-21-1 to
§ 27-53-33)

Title 27

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MISSISSIPPI CODE

1972

ANNOTATED

ADOPTED AS THE OFFICIAL CODE OF THE
STATE OF MISSISSIPPI
BY THE
1972 SESSION OF THE LEGISLATURE

VOLUME EIGHT B

TAXATION AND FINANCE

§§ 27-21-1 to 27-53-33

CONTAINING PERMANENT PUBLIC STATUTES OF MISSISSIPPI
TO THE END OF THE 2017 REGULAR LEGISLATIVE SESSION
AND 1ST EXTRAORDINARY SESSION

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4453611

ISBN 978-1-5221-2626-3 (Volume 8B)
ISBN 978-0-3270-9628-3 (Code set)

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701 E. Water Street, Charlottesville, VA 22902-5389

www.lexisnexis.com

(Pub. 44510)

PREFACE

The Mississippi Code of 1972, which became effective on November 1, 1973, is the culmination of nearly four years of effort on the part of the Legislature, the Attorney General's office and the publishers, which brings together provisions of general statutory law having a common subject matter into a more orderly and logical framework of code titles and chapters, and employing a modern and effective section numbering system. A major by-product of the code revision will be the state-owned magnetic computer tape containing the Mississippi Code of 1972, which will be of invaluable assistance to the Legislature and to the state.

The enabling act for the code was a recommendation of the Mississippi State Bar, which resulted in the consideration and passage of Senate Bill 1964, Chapter 465, Laws of 1970, signed into law by Governor John Bell Williams.

The Code Committee provided for in that act was comprised of A. F. Summer, Attorney General, Heber Ladner, Secretary of State, Representative Edgar J. Stephens, Jr., Chairman, House Appropriations Committee, Senator William G. Burgin, Jr., Chairman, Senate Appropriations Committee, Representative H. L. Meredith, Jr., Chairman, House Judiciary "A" and Judiciary en banc Committees, Senator E. K. Collins, Chairman, Senate Judiciary "A" and Judiciary en banc Committees, Representative Ney McKinley Gore, Jr., Chairman, House Judiciary "B" Committee, and Senator William E. Alexander, Chairman, Senate Judiciary "B" Committee. In 1972, Representative Marby Robert Penton and Senator Herman B. Decell, Chairman of House and Senate Judiciary "B" Committees, respectively, became members of the Committee, replacing Representative Gore and Senator Collins, Senator Alexander having been appointed Chairman of Senate Judiciary "A" and Judiciary en banc Committees. The Deputy Attorney General, Delos H. Burks, served the Code Committee as Secretary. Special Assistant Attorney General Fred J. Lotterhos, under the supervision of the Attorney General, was assigned the principal responsibility for the supervision of the recodification, including the consideration and treatment of some 16,000 sections of code manuscript.

Final legislative approval was given to the Mississippi Code of 1972 by passage of Senate Bill 2034, Laws of 1972, which was signed by Governor William L. Waller on April 26, 1972.

The Code Committee is of the opinion that the recodification has been thoroughly and well accomplished, and will result in a greatly improved repository of the general statutory law of the state.

A. F. SUMMER
ATTORNEY GENERAL

PUBLISHER'S FOREWORD

This Volume 8B of the Mississippi Code of 1972 Annotated contains material formerly appearing in the original 1973 bound Volume 8, the 2000 and 2005 Replacement Volume 9, the 2006 Replacement Volume 8 and the 2010 Replacement Volume 8A and its Cumulative Supplement, as well as amendments, repeals, and new Code provisions enacted by the Mississippi Legislature through the 2017 Regular and 1st Extraordinary Legislative Sessions.

This volume contains Chapters 21 through 53 of Title 27. The remaining Title 27 chapters appear in the following volumes: Chapters 1 through 17, Replacement Volume 8; Chapter 19, Replacement Volume 8A, and Chapters 55 through 113, Replacement Volume 8C.

Case annotations are included based on decisions of the State and federal courts in cases arising in Mississippi. Many of these cases were decided under the former statutes in effect prior to the enactment of the Code of 1972. These earlier cases have been moved to pertinent sections of the Code where they may be useful in interpreting the current statutes. Annotations to collateral research references are also included.

To better serve our customers by making our annotations more current, LexisNexis has changed the sources that are read to create annotations for this publication. Rather than waiting for cases to appear in printed reporters, we now read court decisions as they are released by the courts. A consequence of this more current reading of cases, as they are posted online on LexisNexis, is that the most recent cases annotated may not yet have print reporter citations. These will be provided, as they become available, through later publications.

This publication contains annotations taken from decisions of the Mississippi Supreme Court and the Court of Appeals and decisions of the appropriate federal courts. These cases will be printed in the following reporters:

Southern Reporter, 3rd Series
United States Supreme Court Reports
Supreme Court Reporter
United States Supreme Court Reports, Lawyers' Edition, 2nd Series
Federal Reporter, 3rd Series
Federal Supplement, 3rd Series
Federal Rules Decisions
Bankruptcy Reporter

Additionally, annotations have been taken from the following sources:

American Law Reports, 6th Series
American Law Reports, Federal Series
Mississippi College Law Review
Mississippi Law Journal

Finally, published Opinions of the Attorney General and opinions of the Ethics Commission have been examined for annotations.

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PUBLISHER'S FOREWORD

A comprehensive Index appears at the end of this volume.

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For further information or assistance, please call us toll-free at (800) 833-9844, fax us toll-free at (800) 643-1280, e-mail us at customer.support@bender.com, or write to: Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

September 2017 LexisNexis

User's Guide

This guide is designed to help both the lawyer and the layperson get the most out of the Mississippi Code of 1972 Annotated. Information about key features of the Code and suggestions for its more effective use are given under the following headings:

— Advance Code Service
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— Attorney General Opinions
— Code Status
— Comparable Legislation from other States
— Court Rules
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If you have a question not addressed by the User's Guide, or comments about your Code service, you may contact us by calling us toll-free at (800) 833-9844, faxing us toll-free at (800) 643-1280, e-mailing us at customer.support@bender.com, or writing to Mississippi Code Editor, LexisNexis, 701 E Water Street, Charlottesville, VA 22902-5389.

ADVANCE CODE SERVICE

Three times a year, at roughly quarterly intervals between delivery of Code supplement pocket parts, we publish the Mississippi Advance Code Service pamphlets. These pamphlets contain updated statutory material and annotations to Attorney General opinions, research and practice references, and recent court decisions construing the Code. Each pamphlet is cumulative, so that each is a "one-stop" source of case notes updating those in your Code bound volumes and pocket parts.

ADVANCE SHEETS

The Advance Sheets consist of a series of pamphlets issued in the spring. The series reproduces the acts passed by the Mississippi Legislature and approved by the Governor during the legislative session. Features include tables showing the impact of legislation on sections of the Mississippi Code of 1972 Annotated, and a cumulative index. These pamphlets enable the user to receive a preview of approved legislation prior to supplement availability, and serve as an excellent source of legislative history.

AMENDMENT NOTES

Every time a Code provision is amended, we prepare a note describing the effect of the amendment. By reading the note, you can ascertain the impact of the change without having to check the former statute itself.

Amendment notes are retained in the Supplement until the bound volume is replaced, at which time notes from all but the last two years are deleted.

Amendment notes are available online from 1991 until the present in the Mississippi Legislative Archive.

ANALYSES

Each title, chapter, and article appearing in a bound volume or supplement is preceded by an analysis. The analysis details the scope of the title, chapter, and article and enables you to see at a glance the content of the title, chapter, and article without resorting to a page-by-page examination in the bound volume or supplement.

ATTORNEY GENERAL OPINIONS

Opinions of the Attorney General for the State of Mississippi have been read for constructions of Mississippi law. Notes describing the subject matter of the opinions have been placed under relevant Code provisions under the heading “Attorney General Opinions.” The citation at the end of each note refers to the person requesting the opinion, the date of the opinion, and the opinion number.

CODE STATUS

The Mississippi Code of 1972 Annotated is Mississippi's official code and is considered evidence of the statute law of the State of Mississippi (see § 1-1-8). The Code was enacted by Chapter 394 of the Laws of 1972, which was signed by the Governor on April 26, 1972.

Title 1, Chapters 1 through 5 of the Code contain statutes governing the status and construction of the Code.

COMPARABLE LEGISLATION FROM OTHER STATES

Notes to comparable legislation from other states appear for uniform laws, interstate compacts, statutory provisions pertaining to reciprocity and cooperation with other states, and various important statutes of general interest. Other states' statutes that are similar in subject matter and scope to those of Mississippi are cited, generally, under the first section of the chapter or article to which they pertain. Occasionally, comparable legislation pertains to only one section, in which case it is cited under that section rather than at the chapter or article level.

See also *Federal Aspects*.

COURT RULES

The Mississippi Court Rules are published separately by LexisNexis in a fully annotated softcover volume which is replaced annually and supplemented semi-annually.

The Court Rules volume contains statewide rules of procedure of the state courts, the local rules of the United States district courts and bankruptcy courts for Mississippi, and the rules of the United States Court of Appeals for the Fifth Circuit. Rules are received from the courts and edited only for stylistic consistency. For further information, see the Preface to the Mississippi Court Rules volume.

CROSS REFERENCES

Cross references refer you to notes under other Code sections, that may affect a law or place it in context. Cross references also are used under repealed provisions to refer you to an existing law on a similar subject. Cross references do not cite all related statutes, however, since these can be identified by using the General Index.

See also *Comparable Legislation from other States* and *Federal Aspects*.

EDITOR'S NOTES

Editor's notes are notes prepared by the Publisher that contain information about important or unusual features of a law, or special circumstances surrounding passage of the law, that are not apparent from the law's text.

See also *Effective Dates*.

EFFECTIVE DATES

Absent a specific effective date provision within an act, Mississippi laws generally take effect upon approval date, which is the date the act is signed into law by the Governor.

FEDERAL ASPECTS

Notes to federal legislation that is similar in subject matter and scope to the laws of Mississippi are referenced throughout the Code. In addition, the

Code contains the United States Code Service citation for any federal law that is referred to in a Mississippi statute by its popular name or by its session law designation.

See also *Comparable Legislation from other States.*

INDEX

The Code is completely indexed in two softcover Index volumes, which are updated and replaced annually. In addition, each volume of the Code is followed by its own index. As accurate and thorough as the Index is, your best defense against index wild goose chases is familiarity with indexing techniques. To that end, an explanatory Foreword to the Index appears in the first Index volume.

JOINT LEGISLATIVE COMMITTEE NOTES

Joint Legislative Committee notes are included in the Code to describe codification decisions made by the Mississippi Joint Legislative Committee on Compilation, Revision and Publication of Legislation. Examples of Committee actions that warrant the inclusion of a note are the integration of multiple amendments to a single Code section during the same legislative session, and the correction of typographical errors appearing in the Code.

JUDICIAL DECISIONS

Every reported case from the Supreme Court of Mississippi, the Court of Appeals of Mississippi, federal district courts for Mississippi, the federal Fifth Circuit Court of Appeals and the United States Supreme Court has been read for constructions of Mississippi law. These constructions are noted under pertinent sections of the statutes or Mississippi Constitution provisions, under the heading "Judicial Decisions." Where a decision has been reviewed by a higher court, subsequent judicial history and disposition is noted in the case note if such disposition has any bearing on the annotated material. Where two or more decisions state the same rule of law, the case citations are cumulated under one case note.

Case notes are grouped together under headings called "catchlines." The catchlines identify the basic subject matter of the case notes and assist the user in locating pertinent notes. Catchlines are numbered and arranged thematically, with "In general" first. Where there are two or more catchlines, an analysis, listing all the catchlines, precedes the annotations.

Frequently, statutes carry notes to cases that arose under earlier laws on the same subject. Case notes are retained so long as the editor believes the note will have some relevance under current law, though of course the relevance may be diminished by later changes in the law. These case notes appear under the heading "Decisions under former law."

ORGANIZATION AND NUMBERING SYSTEM

The Code is organized by titles, chapters, articles, subarticles, undesignated centered headings and sections. Analyses at the beginning of each title, chapter, article, and subarticle help you understand the internal arrangement of each Code unit (see *Analyses*).

Odd numbers are generally used for the numbering of titles, chapters and sections. Even numbers have been used for some chapters and sections so that a particular new chapter or section might be logically placed with other chapters and sections dealing with the same or similar subject matter. Similarly, the use of numbers with decimal points has been used for some sections in order that they may be inserted among other sections pertaining to the same subject.

The title, chapter, and section for each Code section is revealed by its section number. Thus, in the designation "§ 1-3-65," the first digit ("1") means the provision is in Title 1 ("Laws and Statutes"); the second ("3") indicates Chapter 3 ("Construction of Statutes"); and the last two digits ("65") mean the 65th section in that chapter ("Construction of terms generally").

Articles and subarticles are not reflected by section number designations.

Within sections, subsections and paragraphs usually are designated following this pattern: (1)(a)(i)1. or (1)(a)(i)A. A distinctive indention scheme is applied to suggest the relative value of each unit within this hierarchy.

PLACEMENT OF NOTES

Where a note pertains to a single statute section, it will of course be set out following that section. In many instances, however, a note applies equally to several statute sections or to an entire chapter or article. If the pertinent sections are scattered, or few in number, the note will be duplicated for each section. But where the note applies to all or most of the sections in a chapter or article, we prevent the space-consuming repetition of notes by placing the note at the very beginning of the chapter or article.

REPLACEMENT VOLUMES

The Code is periodically updated and streamlined by the replacement of volumes. Although a current set of the Code contains all currently applicable statutes, we encourage you to retain replaced volumes and their supplement pockets parts for historical reference.

RESEARCH AND PRACTICE REFERENCES

Citations to references in American Jurisprudence, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, American Jurisprudence Trials, American Law Reports, First through Sixth Series, ALR Federal, Corpus Juris Secundum, various other treatises and practice guides, and Mississippi law journals are given under this heading, wherever the references appear to discuss the statute under which the citation appears, or a topic related to the statute. These citations are intended only to give you a starting point for your library research. The Mississippi law journals include Mississippi Law Journal and Mississippi College Law Review.

SOURCE NOTES

Each section of the Code is followed by a brief note showing the acts of the Legislature on which it is based, including the act that originally enacted the section and any subsequent amendments.

The source note follows the section text, preceding any other annotations for the section. Information in the source note is listed in chronological order, with the most recent information listed last. If a section has been renumbered, the former number will appear in the source note.

The tables volume should also be consulted when researching the history of a statutory section, since it contains cross reference tables that provide a statutory citation for each section of the session laws and the date each act went into effect.

STATUTE HEADINGS

Headings or "catchlines" for Code sections and subsections are generally created and maintained by the publisher. They are mere catchwords and are not to be deemed or taken as the official title of a section or as a part of the section. Your suggestions for the improvement of particular catchlines are invited.

TABLES

The Mississippi Code of 1972 Annotated contains several tables that can assist you in your research. These are published in the Statutory Tables volume of the Code, and include the following:

- Sections of the Code of 1930 carried into the Code of 1942.
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- Allocation of Acts of Legislature, 1931 — 1972.
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- Consolidated Tables of amendments and repeals of 1942 Code sections.
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CHAPTER 21

Finance Company Privilege Tax

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§ 27-21-1. Administration.

The administration of this chapter is vested in and shall be exercised by the Commissioner of Revenue of the Department of Revenue, hereinafter referred to as commissioner, and who may do any act required in the administration of the law by and through his duly appointed and constituted deputies or agents, who shall serve under him, and shall perform such duties as may be required by the commissioner, including the signing of notices, warrants and such other documents as may be specifically designated by the commissioner, not inconsistent with this chapter. The Commissioner of Revenue of the Department of Revenue, as commissioner, may require the assistance of and act through the Attorney General, prosecuting attorney of any county, or any district attorney, or any attorney for the department. The commissioner may, with the assent of the Governor, employ special counsel in any county to aid the prosecuting attorney of such county or the Attorney General or district attorney, and the compensation of such special counsel shall be fixed by and paid only upon the approval of the Governor; but the Attorney General, district attorney or prosecuting attorney of any county shall receive no fees or compensation for services rendered in enforcing this chapter in addition to the salary paid such officer.

SOURCES: Codes, 1942, § 9347; Laws, 1940, ch. 110; Laws, 2009, ch. 492, § 60, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Tax suits by attorney general, see § 7-5-55.

Duties and powers of the Commissioner of Revenue, see § 27-3-31.

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 382 (complaint, petition, or declaration to recover unpaid business license tax).

§ 27-21-3. Privilege tax levied.

There is hereby levied a statewide privilege tax upon every person, firm, corporation, or association, other than banks, state or national, doing business of lending money secured by mortgages, trust receipts, retained-title or purchase contracts, on motor vehicles, furniture, refrigerators containing mechanical freezing units operated by gas or electricity, or radios or any other tangible personal property, located in the State of Mississippi, or doing a business of purchasing, discounting, or otherwise acquiring notes, trust receipts, or other forms of indebtedness secured by liens, in the form of mortgages, retained-title or purchase contracts, or other liens, upon motor vehicles, furniture, refrigerators containing mechanical units operated by gas or electricity or other fuels, or radios or any other tangible personal property, located in this state (not including, however, cotton, cotton seed or agricultural products); the amount of said tax to bear a direct relationship to the value of the securities held, owned, or acquired by such person, firm, corporation or association, and exacted in return for the protection afforded by the government and laws of this state in the enjoyment of such ownership and rights acquired thereby; the tax to be computed by application of the rate hereinafter set out to the total value of such securities, other than those securities representing loans for the payment of the wholesale sales price and those securities representing transactions known as "floor plan," upon which no tax is to be imposed. Provided, however, that the tax imposed in this chapter shall not apply to (a) persons, firms or corporations engaged in the general mercantile business, who make advancements of money, merchandise and supplies to their customers and who take mortgages, deeds of trust or other liens upon personal property to secure the payment of the indebtedness thus incurred; or (b) a member of an affiliated group as defined by Section 1504 of the Internal Revenue Code of 1986, as amended, on July 1, 1995, with respect to loans made by one member of the affiliated group to another and who is not otherwise engaged in the business of loaning money secured by tangible personal property.

SOURCES: Codes, 1942, § 9341; Laws, 1940, ch. 110; Laws, 1950, ch 541, § 1; Laws, 1994, ch. 497, § 1; Laws, 1995, ch. 457, § 1, eff from and after July 1, 1995.

Cross References — Payments of tax levied by this section being credit on tax on income derived exclusively from finance company business, see § 27-21-9.

Small loan privilege tax law, see § 75-67-201 et seq.

Federal Aspects — Section 1504 of the Internal Revenue Code is codified at 26 USCS § 1504.

JUDICIAL DECISIONS

1. Validity.
2. —Interstate commerce.
3. Construction and application, generally.

4. —Foreign companies.

1. Validity.

As to whether the classification adopted by the legislature is discriminatory in imposing a tax upon finance companies for the privilege of engaging in the business defined by the statute and excepting the banks and local merchants from the payment thereof or is based upon a reasonable distinction, the state constitution (§ 181, Const. of 1890) recognizes the authority to provide by statute a different method of assessing banks than that for assessing other corporations and individuals and the right of the legislature to enact statutes based upon this constitutional classification has been upheld. Stone v. General Elec. Contracts Corp., 193 Miss. 317, 7 So. 2d 811 (1942).

The tax here imposed is a privilege tax and not a property tax, and, as such, a constitutional provision prohibiting taxation of property in excess of its true value does not apply. Stone v. General Contract Purchase Corp., 193 Miss. 301, 7 So. 2d 806, 140 A.L.R. 1029 (1942).

The fact that provision of a statute imposing a privilege tax upon the business of acquiring notes secured by liens on motor vehicles, furniture, and refrigerators, may be unconstitutional, in that banks, persons engaged in a general mercantile business, and dealers, are exempted from the tax, the taxpayer is forbidden to pass the tax on to the consumer or dealer, and is forbidden, upon nonpayment of the tax, to have access to the courts of the state for the collection of the notes for the enforcement of the liens, does not render the entire statute void, but it will be enforced as if those provisions were not included in it, both under the general rule of statutory construction, and under an express provision in the statute. Stone v. General Contract Purchase Corp., 193 Miss. 301, 7 So. 2d 806, 140 A.L.R. 1029 (1942).

The fact that a privilege tax is a contingent upon the acquisition of property outside the state does not make it invalid, where, after such acquisition, the taxpayer engages in activities within the state in connection with such property. Stone v. General Contract Purchase Corp., 193 Miss. 301, 7 So. 2d 806, 140 A.L.R. 1029 (1942).

2. —Interstate commerce.

If the acquisition by a corporation of promissory notes in its office outside the state should be considered transportation in interstate commerce, such fact is of no consequence since when the transportation of the notes ended and they were delivered to the corporation, such interstate commerce, if such there was, ended and all the matters warranting the exaction of the tax either continued or took place thereafter, and in addition it was not the purpose of the commerce clause to relieve those engaged in interstate commerce of their just share of state tax burdens, merely because an incidental or consequential effect of the tax was an increase in the cost of doing the business, and the exaction of the tax imposed the same burden on the business tax whether prosecuted by means of intra or interstate commerce or both, and such tax does not discriminate against interstate commerce where equality is sustained. Stone v. General Contract Purchase Corp., 193 Miss. 301, 7 So. 2d 806, 140 A.L.R. 1029 (1942).

The fact that interstate commerce may be involved in the acquisition outside of the state of notes executed within, and secured by liens on property within the state, does not affect the validity of a state privilege tax on the business of acquiring notes secured by liens upon motor vehicles, furniture, etc., where, after the notes had been acquired and been delivered in interstate commerce to the holder, the subsequent activities of the holder, in connection with the collection of the notes and the enforcement of the liens, are sufficient, of themselves, to support the tax. Stone v. General Contract Purchase Corp., 193 Miss. 301, 7 So. 2d 806, 140 A.L.R. 1029 (1942).

3. Construction and application, generally.

A money lender duly licensed under the Small Loan Privilege Tax Act of 1958 (Code 1942, § 5591-31 et seq.) may also be subject to the tax imposed on finance companies. Attala Loans, Inc. v. Standard Disct. Corp., 249 Miss. 282, 161 So. 2d 631 (1964).

A finance company which has paid the tax levied by this section [Code 1942, § 9341] may not be required to pay also the tax levied under Code 1942 § 9396-134, where there is no evidence that it is engaged in the business of an industrial loan company, industrial bank, or Morgan Plan Company. Winter v. Murdock Acceptance Corp., 246 Miss. 698, 149 So. 2d 516 (1963), suggestion of error sustained in part, overruled in part, 246 Miss. 698, 153 So. 2d 292 (1963).

The statewide finance company tax does not include the privilege of lending money at a greater rate of interest than 15 per cent and therefore is not in lieu of the municipal tax on moneylenders who charge more than 15 per cent. Bailey v. Associates Loan Co., 218 Miss. 516, 68 So. 2d 476 (1953).

Where a manufacturer of tractors permitted the dealers to accept in part payment trade-in tractors, the dealer retaining possession of the trade-in chattel, and when he sold it on part cash and part credit, taking a note for the balance, he had the privilege to transfer the note at its face value to the manufacturer to be applied on tractor purchases by the dealer from the manufacturer, the manufacturer was not liable for privilege or occupation taxes on the notes taken from the purchasers of the trade-in property, the plan being simply an incidental means by which the manufacturer promoted the sale of its tractors, and wherein it realized on that which was taken as a part of the purchase price of its tractors, not the tractors of some other person. Stone v. J.I. Case Co., 194 Miss. 708, 10 So. 2d 201 (1942).

Where a nonresident manufacturer of tractors and other farm and industrial machinery sold its products to a resident agent, frequently selling on terms of part cash, with the balance evidenced in the form of instalment notes, secured by conditional sales contracts, and in some instances mortgages on additional property, and no notes or other securities were received except those given by way of part payment for machinery, the manufacturer was not subject to the tax as one engaged in the business of lending money. Stone v. Allis-Chalmers Mfg. Co., 193 Miss. 294, 8 So. 2d 228 (1942).

Where the manufacturer of tractors and other farm machinery included as part of some of its sales "allied equipment" appropriate to be used with the tractor, both tractor and equipment being included in one transaction and the tractor manufacturer paying directly to the manufacturer of the equipment the price therefor, and then the tractor manufacturer took notes, payable to himself, to cover the balance due on the entire assembly, but no notes or securities were taken from the customers payable to the owner or manufacturer of the allied equipment, the fact that such allied equipment was involved in the transaction did not render the tractor manufacturer liable for the tax as one engaged in lending money. Stone v. Allis-Chalmers Mfg. Co., 193 Miss. 294, 8 So. 2d 228 (1942).

4. —Foreign companies.

The tax here imposed is applicable alike to finance companies acquiring securities through their offices and agents located and residing in the state and to those with offices and agents outside the state who acquire the ownership and come into possession of such security under similar terms and conditions through local dealers in the state. Stone v. General Elec. Contracts Corp., 193 Miss. 317, 7 So. 2d 811 (1942).

The privilege tax herein imposed is applicable to a foreign corporation which has neither filed its corporate charter nor qualified to do business in the state and neither maintains an office nor has an agent in its employ in the state who is vested with executive authority to finally consummate the purchase, discount or other acquisition of the note and security enumerated by the statute and which the statute has defined as "doing business" in the state. Stone v. General Elec. Contracts Corp., 193 Miss. 317, 7 So. 2d 811 (1942).

§ 27-21-5. Schedule of tax.

The rate by which the amount of the tax hereby levied shall be one-fourth of one per centum (¼ of 1%) of the total amount of indebtedness secured by tangible property located in the State of Mississippi.

SOURCES: Codes, 1942, § 9342; Laws, 1940, ch. 110; Laws, 1950, ch. 541, § 2; Laws, 1994, ch. 497, § 2, eff from and after May 31, 1994.

JUDICIAL DECISIONS

1. In general.

The phrase "total amount of indebtedness" as applied to an interest-bearing note of a finance company included the principal amount of the debt but not the "Estimated Finance Charge" where the interest charges were not included in the "Amount Financed" and the interest varied precisely with how long the borrower had had use of the principal outstanding balance. Auditor of Pub. Accounts v. Consumer Credit Plan, 388 So. 2d 150 (Miss. 1980).

The phrase "total amount of indebtedness" as applied to a finance corporation meant the total of the face amounts of all notes or evidences of indebtedness, including the total finance charges made by the company as well as amounts used to refinance previous loans made by the company and for which the privilege tax had previously been paid. ABC Fin. Corp. v. Auditor of Pub. Accounts, 339 So. 2d 555 (Miss. 1976).

§ 27-21-7. Filing of report with Department of Revenue; payment of tax; due dates.

(1) Every person, firm, corporation or association liable for the tax under the provisions of this chapter, shall make and file with the State Tax Commission a full and correct report of the total amount of the indebtedness it has secured by tangible personal property located in Mississippi and pay to the State Tax Commission the tax computed as provided in Section 27-21-5.

Such report and payment are due as follows:

For the period January 1 through March 31, the report and payment are due April 20;

For the period April 1 through June 30, the report and payment are due July 20;

For the period July 1 through September 30, the report and payment are due October 20;

For the period October 1 through December 31, the report and payment are due January 20.

(2) An amended report for March through May 1994, along with indebtedness acquired for June 1994, shall be due July 20, 1994.

SOURCES: Codes, 1942, § 9343; Laws, 1940, ch. 110; Laws, 1994, ch. 497, § 3, eff from and after May 31, 1994.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Refund of taxes erroneously paid, see § 27-73-1 et seq.

§ 27-21-9. Tax in lieu of other privilege taxes.

The tax hereby levied is in lieu of all other privilege taxes upon such business, and shall be paid to the commissioner, as provided by law, previous to enjoyment of the privilege for the period covered by the payment; and the amounts paid by the taxpayer in any given calendar year shall be credited upon such income tax as may be due by the taxpayer for such calendar year, or for the next fiscal year ending after the close of such calendar year on the income derived exclusively from the business which measures the annual statewide privilege tax levied by Section 27-21-3, Mississippi Code of 1972. The credit so allowed shall, in no event, be in a greater amount than the total amount of income tax due by the taxpayer for such calendar or fiscal year; it being the purpose and effect of this section that whichever of the above taxes is greater in amount shall be paid by the taxpayer.

SOURCES: Codes, 1942, § 9344; Laws, 1940, ch. 110; Laws, 1982, ch. 489, § 12, eff from and after January 1, 1983.

Editor's Note — Laws of 1982, ch. 489, § 14, effective from and after January 1, 1982, provides as follows:

"SECTION 14. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under Title 27, Chapters 7, 13 and 21, Mississippi Code of 1972, prior to the applicable effective date of the sections of this act, whether such assessments, appeals, suits, claims or actions shall have been begun before the applicable effective date of the sections of this act, or shall thereafter be begun; and the provisions of the aforesaid laws and amendments thereto are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the executing of any warrant thereunder prior to the applicable effective date of the sections of this act, or for the filing of reports, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Small loan privilege tax law, see § 75-67-201 et seq.

JUDICIAL DECISIONS

1. In general.

Taxpayer may claim entire privilege tax credit, notwithstanding that amount of credit exceeds privileged corporate subsidiary's income tax attributable to its Mississippi operations, and this credit inures to benefit of affiliated group via consolidated return. GMC v. Mississippi State Tax Comm'n, 510 So. 2d 498 (Miss. 1987).

Term "taxpayer", under § 27-21-9, means entity liable for payment of privilege tax. GMC v. Mississippi State Tax Comm'n, 510 So. 2d 498 (Miss. 1987).

A corporation engaged in the finance or loan brokerage business is authorized under the provisions of this section [Code 1942, § 9344] to take credit upon Mississippi state income taxes due by it on income derived from sources unrelated to such business, for the amount assessed against it and paid as a privilege tax for engaging in the finance or loan brokerage business; such credit to be applied against income earned during the same calendar or fiscal year. Mississippi State Tax Commission v. Defenbaugh & Co., 197 So. 2d

788 (Miss. 1967).

ATTORNEY GENERAL OPINIONS

The statute operates to prohibit municipalities from imposing local privilege taxes on finance companies. Exum-Petty, June 5, 1998, A.G. Op. #98-0323.

§ 27-21-11. "Doing business" defined.

The terms "doing business", or "doing a business", as used in this chapter, shall mean and include any and every act, power or privilege exercised or enjoyed in this state as an incident to, or in connection with, the lending of money, acquiring or owning notes or other forms of indebtedness secured as aforesaid by liens on tangible personal property located in the state of Mississippi, which liens may be enforced or indebtedness collected under the laws and government of this state; and the enjoyment of any and every right or privilege as owner of such securities on account of which said act, right, power or privilege so exercised or enjoyed, the state of Mississippi can lawfully levy and collect a privilege tax. Provided, the terms "doing business", or "doing a business", as used in this chapter shall not include the owning of notes or other forms of indebtedness when said notes or other forms of indebtedness are owned by the dealer selling the tangible personal property securing said notes or other forms of indebtedness.

SOURCES: Codes, 1942, § 9345; Laws, 1940, ch. 110.

JUDICIAL DECISIONS

1. In general.

A nonresident foreign corporation engaged in the business of purchasing collateral notes from dealers and manufacturers in Mississippi is not engaged in doing business as defined in this section [Code 1942, § 9345]. Ross Constr. Co. v. U.M. & M. Credit Corp., 214 So. 2d 822 (Miss. 1968).

All of the things necessary for the prosecution of a business need not take place within the state imposing a privilege tax thereon before the tax can be exacted; all that is necessary is that something be done or take place within the taxing state that is incident to or substantially connected with the prosecution of the business. Stone v. General Contract Purchase Corp., 193 Miss. 301, 7 So. 2d 806, 140 A.L.R. 1029 (1942).

This section [Code 1942, § 9345] is applicable to a corporation engaging in the business of acquiring notes secured by lien upon motor vehicles, furniture and refrigerators, at an office outside the state, where the notes are secured by liens on property located within the state, which are enforceable in the courts of the state, and agents of the corporation come into the state, collect payments on the notes, ascertain the existence and conditions of the property securing the notes, and, when necessary, take possession of the property in order to enforce the lien. Stone v. General Contract Purchase Corp., 193 Miss. 301, 7 So. 2d 806, 140 A.L.R. 1029 (1942).

The tax herein imposed is applicable to persons and corporations who acquire securities of the character described herein at a place of business in another state, since the fact that a corporation's agents come into the state, collect the payments due on the note held by it, ascertain the existence and condition of the property securing the payments and when necessary take possession of the property in order to enforce the lien thereon, are necessary incidents to the successful prosecution of the corporation's business and are within the statutory definition of "doing business," and are sufficient to sustain the exaction of the tax, in addition to the fact that the state gives protection to and allows enforcement of the lien taken on property in the state to secure the notes and other evidences of indebtedness purchased by the corporation. Stone v. General Contract Purchase Corp., 193 Miss. 301, 7 So. 2d 806, 140 A.L.R. 1029 (1942).

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. Proof of Facts, Doing Business, Proof No. 1 (doing business).

§ 27-21-13. Doing business without paying tax; denial of access to courts to collect debts; penalty for passing tax on to consumer or dealer.

If any person, firm, corporation or association shall do business in this state as hereinbefore defined, without having paid the tax hereby imposed, then, in addition to all other fines and penalties, such person, firm, corporation or association, shall be denied access to the courts of this state for the purpose of collecting any indebtedness evidenced by securities held, enforcing securities so held or acquired, or for the purpose of obtaining possession of the property upon which a lien exists under such note or other form of indebtedness, or for the purpose of obtaining judgment on any such notes or contracts or other evidences of indebtedness, or for any other purpose in connection with the enforcement of any right acquired by the acquisition or ownership of such notes, evidences of indebtedness or other contracts. If any holder of such paper shall directly or indirectly pass the tax imposed by this chapter on to the consumer or dealer, or shall attempt to do so, such holder shall be liable to a penalty of Two Hundred Dollars ($200.00) for each separate transaction involved, which penalty or penalties may be recovered by suit by any such dealer or consumer aggrieved. This section shall be construed liberally in favor of the dealer or consumer aggrieved.

SOURCES: Codes, 1942, § 9346; Laws, 1940, ch. 110; Laws, 1994, ch. 497, § 4, eff from and after May 31, 1994.

Cross References — Small loan privilege tax law, see § 75-67-201 et seq.

JUDICIAL DECISIONS

1. In general.

A loan broker licensed under the Small Loan Privilege Tax Act (Code 1942, § 5591-31 et seq.) is neither a "consumer" or a "dealer" within the meaning of this section [Code 1942, § 9346]. Attala Loans, Inc. v. Standard Disct. Corp., 249 Miss. 282, 161 So. 2d 631 (1964).

A money lender duly licensed under the Small Loan Privilege Tax Act of 1958 (Code 1942, § 5591-31 et seq.) is not subject to the penalty imposed by this section

[Code 1942, § 9346]. Attala Loans, Inc. v. Standard Disct. Corp., 249 Miss. 282, 161 So. 2d 631 (1964).

Default by a foreign corporation in the payment of privilege taxes for prior years does not impose the penalty of disqualification to sue on business done in a year for which the tax was paid. Wilkinson v. General Contract Purchase Corp., 202 Miss. 132, 30 So. 2d 237 (1947).

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 50, 51, et seq.

53A Am. Jur. 2d, Money Lenders and Pawnbrokers §§ 1-33 et seq.

CJS. 53 C.J.S., Licenses §§ 70-72.

58 C.J.S., Money Lenders § 4.

§ 27-21-15. Records to be kept.

It shall be the duty of every person engaging or continuing in this state, in any business as defined in this chapter, and for which the privilege tax is imposed by this chapter, to keep and preserve adequate records of all transactions by which securities of any character are required, evidencing liens upon tangible property located in this state, as hereinbefore defined. The records provided for in this section shall be kept in the taxpayer's principal place of business within this state, and if no such principal place of business is maintained in this state, then such records shall be kept at some convenient place in the custody of some reliable officer or person to be designated by the commissioner. Said records shall be open to inspection by the commissioner or his duly authorized agents at all reasonable times, for the purpose of ascertaining the amount of taxes due under this chapter.

SOURCES: Codes, 1942, § 9348; Laws, 1940, ch. 110.

§ 27-21-17. Repealed.

Repealed by Laws, 1995, ch. 345, § 1, eff from and after January 1, 1995.

[Codes, 1942, § 9349; Laws, 1940, ch. 110; Laws, 1977, ch. 374, § 1; Laws, 1994, ch. 497, § 5]

Editor's Note — Former § 27-21-17 provided for penalty for failure to pay tax.

§ 27-21-19. Enforcement.

All administrative provisions of the Mississippi Sales Tax Law shall apply with like force and effect to all persons liable for taxes under the provisions of this chapter, and the commissioner and the state tax commission shall exercise all power and authority and perform all the duties with respect to taxpayers under this chapter as are provided in said Mississippi Sales Tax Law. In case of conflict between the provisions of this chapter and any provision in the Mississippi Sales Tax Law, then the provisions of this chapter shall control.

SOURCES: Codes, 1942, § 9350; Laws, 1940, ch. 110; Laws, 1977, ch. 374, § 2, eff from and after passage (approved March 18, 1977).

Editor's Note — Effective July 1, 2010, Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Attachment at law against debtors, see § 11-33-1 et seq.

Garnishment, generally, see § 11-35-1 et seq.

Executions, generally, see § 13-3-111 et seq.

Sheriff's execution and return of process, see § 19-25-37.

Mississippi Sales Tax Law, see § 27-65-1 et seq.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 107-110 et seq.

CJS. 53 C.J.S., Licenses § 101 et seq.

CHAPTER 23

Chain Store Privilege Tax [Repealed]

§§ 27-23-1 through 27-23-23. Repealed.

Repealed by Laws, 1977, ch. 414, § 2, from and after July 1, 1979. [Codes, 1942, §§ 9300-9311; Laws, 1940, ch. 121]

Editor's Note — Former §§ 27-3-1 through 27-3-23 pertained to chain store privilege tax.

Laws of 1977, ch. 414, § 1, effective from and after passage, approved March 29, 1977, amended § 27-23-7. Section 2 of ch. 414 provides that §§ 27-23-1 through 27-23-23 will stand repealed by operation of law from and after July 1, 1979. Section 3 of ch. 414 reads as follows:

SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under any section amended or repealed by this act, whether presently pending or to arise and all provisions of said sections are hereby expressly continued in full force, effect and operation for such purposes.

CHAPTER 25

Severance Taxes

Article 1. Timber and Timber Products 27-25-1
Article 3. Salt Severance Tax 27-25-301
Article 5. Oil Severed or Produced in State 27-25-501
Article 7. Natural Gas Severed or Produced in State 27-25-701

ARTICLE 1.

TIMBER AND TIMBER PRODUCTS.

SEC.
27-25-1. Tax levied.
27-25-3. Definitions.
27-25-5. Measure of tax.
27-25-7. Measure of tax; shipment out of state without sale.
27-25-9. Persons exempt.
27-25-11. Collection and disposition of tax; apportionment among counties.
27-25-13. Timber severed from government lands.
27-25-15. Title in dispute.
27-25-17. Returns; records; penalty.
27-25-19. Carriers; records; removal from state without permit or payment of tax penalized.
27-25-21. Additional information.
27-25-23. When tax due and payable; returns; penalty; administration.
27-25-25. Procedure where owner pays tax direct to tax commissioner; withholding tax in case of purchases by supervisors.
27-25-27. Exemption from ad valorem taxes.

§ 27-25-1. Tax levied.

(1) There is hereby assessed and levied a privilege tax upon each person engaged within this state in the business of growing, felling, cutting, severing and producing logs or any timber products from the soil or water, for sale, profit or commercial use; or purchasing, logging, or selling logs or timber products for commercial purposes. The tax shall be as follows:

(a) For timber, all species used in the manufacture of lumber, veneer, chips or other products:

(i) One Dollar ($1.00) per thousand board feet, or Twelve Cents ($.12) per ton, for pine and other soft woods;

(ii) Seventy-five Cents ($.75) per thousand board feet, or Eight Cents ($.08) per ton, for hardwoods;

(b) For lumber, all species and kinds, including crossties: Seventy-five Cents ($.75) per thousand board feet actual board measure;

(c) For poles, piling, posts, stanchions and like timber products not manufactured into lumber: Three Dollars and Sixty Cents ($3.60) per one hundred (100) cubic feet;

(d) For timber products purchased by cubic feet other than those listed in paragraph (c):

(i) Fifty-five Cents ($.55) per one hundred (100) cubic feet for pine and other soft woods;

(ii) Forty-one Cents ($.41) per one hundred (100) cubic feet for hardwoods;

(e) For pulpwood, all species and kinds except pine: Twenty-two and One-half Cents ($.22-½) per cord of one hundred twenty-eight (128) cubic feet;

(f) For pine pulpwood: Thirty Cents ($.30) per cord of one hundred twenty-eight (128) cubic feet;

(g) For stumpwood, lightwood or other distillate wood: Twenty-five Cents ($.25) per ton of two thousand (2,000) pounds;

(h) For turpentine crude gum: Thirty Cents ($.30) per barrel of four hundred (400) pounds;

(i) For all other timber products not hereinabove specified: Seventy-five Cents ($.75) per thousand board feet or Thirty-seven and One-half Cents ($.37-½) per cord of one hundred twenty-eight (128) cubic feet.

(2) If the tax has been paid by the producer, grower or vendor, then the purchaser shall report the purchases to the commissioner. This report shall be filed monthly by purchasers and shall give the following information: name and address of producer, grower or vendor, timber severance tax permit number, quantity purchased and quantity from each county in which timber products were severed. If tax has not been paid by producer, grower, or vendor, the tax shall be the liability of the purchaser and shall be paid by him.

(3) The tax hereby levied is primarily assessed against the grower of timber products or against the owner of the land from which the products were severed.

(4) The owner or owners of timber products produced or severed from the soil or water are hereby made proportionately responsible and liable for payment of any tax herein levied, and if the tax due is unpaid, then the taxes shall be paid to the commissioner by owner or owners. The tax shall operate as a first lien and privilege upon the timber products. The lien and privilege shall follow the timber products into the hands of the ultimate manufacturer or person or dealer.

SOURCES: Codes, 1942, § 9404-01; Laws, 1956, ch. 414, § 1; Laws, 1974, ch. 548, § 1; Laws, 1981, ch. 457, § 1; Laws, 1986, ch. 430, § 1; Laws, 1996, ch. 515, § 2, eff from and after July 1, 1996.

Editor's Note — Laws of 1986, ch. 430, § 2, effective July 1, 1986, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the timber severance tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in (1)(a)(ii) was corrected by inserting the word "per" following "Seventy-five Cents ($.75)."

Cross References — Refund of taxes, generally, see § 27-73-1 et seq.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. Validity.
7. Construction and application.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. Validity.

Statutes on taxation are to be construed liberally in favor of the taxpayer and strictly against the taxing power, and all doubts are to be resolved in favor of the taxpayer. Stone v. General Box Co., 212 Miss. 60, 53 So. 2d 85 (1951).

7. Construction and application.

By use of the words "board measure" in the statute [Code 1942, § 9404], the legislature did not intend that this would mean the measurement of boards that may be produced from the logs. Stone v. General Box Co., 212 Miss. 60, 53 So. 2d 85 (1951).

This tax of fifteen cents per thousand feet, board measure, for saw timber logs, cross ties, and veneer stock, severed from the soil, is not upon the products which may be manufactured therefrom but a tax on the logs. Stone v. General Box Co., 212 Miss. 60, 53 So. 2d 85 (1951).

Under a former enactment (Laws 1934, ch. 119, § 2a; and Laws 1936, ch. 158, § 2), one whose principal business was the manufacture of veneer and wooden plugs and whose timber business was a mere incident thereto, was not subject to tax. Stone v. Martin Veneer Corp., 183 Miss. 712, 184 So. 435 (1938).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 520.

CJS. 53 C.J.S., Licenses §§ 102, 106.

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 27-25-3. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings as defined in this section, except where the context clearly indicates otherwise:

(a) "Commissioner, " "State Tax Commissioner" or "Tax Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(b) "Grower" means any person owning or leasing lands on which timber or timber products are grown or produced.

(c) "Logs" means stems or trunks of trees cut into convenient lengths for the manufacture of lumber or other timber products.

(d) "Lumber" means products sawed or hewed from logs, and shall be measured by actual board measure in units of board feet, but does not mean other products manufactured from logs such as veneer sheets, tight or slack cooperage, hardwood shuttle blocks, hickory, furniture or handle dimension blanks.

(e) "Person" means any individual, firm, copartnership, association, corporation, receiver, trustee or any other group or combination acting as a unit, and the plural as well as the singular.

(f) "Producer" means any person engaging in or continuing to engage in this state in the business of severing or purchasing timber or timber products form the soil or water.

(g) "Pulpwood" means any timber or timber products severed, produced or used by the manufacturers in the production of pulp and pulp products and shall be measured in units of cords four (4) feet high, four (4) feet wide, and eight (8) feet long, containing one hundred twenty-eight (128) cubic feet, and shall be measured green with bark, as at the date of severance.

(h) "Sever" means to cut, fell, or otherwise separate or produce from the soil or water any timber or timber products.

(i) "Timber" means timber after severance or production.

(j) "Timber products" means timber of all kinds, species, or sizes, after severance, including logs, lumber, poles, piling, posts, blocks, bolts, cordwood, and pulpwood, pine stumpwood, pine knots or other distillate wood, crossties, turpentine (crude gum), and all other products derived from timber which have a sale or commercial value.

SOURCES: Codes, 1942, § 9404-02; Laws, 1956, ch. 414, § 2; Laws, 1996, ch. 515, § 3; Laws, 2009, ch. 492, § 61, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue, see § 27-3-1 et seq.

Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue of the Department of Revenue, see § 27-3-4.

Measure of saw logs and square timber, see § 75-27-113.

§ 27-25-5. Measure of tax.

The measure of this tax is the quantity of timber or timber products at the date of severance or production. If the timber is manufactured into lumber and the tax cannot be computed from weight or measured volume, because no record is used or available or the producer or purchaser does not maintain adequate records to show the measure of the tax by weight or measured volume, the tax shall be paid upon the number of board feet of lumber manufactured from the timber. The commissioner may prescribe rules and regulations for ascertaining the quantity of timber or timber products for the purposes of this article.

SOURCES: Codes, 1942, § 9404-03; Laws, 1956, ch. 414, § 3; Laws, 1996, ch. 515, § 4, eff from and after July 1, 1996.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 520.

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 27-25-7. Measure of tax; shipment out of state without sale.

If any person liable for any tax under this article shall ship or transport his timber or timber products, or any part thereof, out of the state, without making a sale, then the quantity or value thereof, as the case may be, in the condition or form in which they existed immediately before transportation out of the state, shall be the basis for the assessment of the tax imposed by this section.

SOURCES: Codes, 1942, § 9404-04; Laws, 1956, ch. 414, § 4.

§ 27-25-9. Persons exempt.

The tax herein levied shall not apply to, nor shall such tax be required of, those individual owners of timber who occasionally sever or cut the same from their own premises, to be utilized by them in the construction or repair of their own structures, buildings or improvements, or for home consumption or used in the processing of any farm products, or to a purchaser or consumer of timber, or its products, on which the tax herein levied has been paid.

SOURCES: Codes, 1942, § 9404-05; Laws, 1956, ch. 414, § 5.

§ 27-25-11. Collection and disposition of tax; apportionment among counties.

All taxes herein levied shall be collected by the state tax commissioner and shall be deposited in the state treasury in accordance with Section 7-9-21. For the 1984 fiscal year and each fiscal year thereafter, eighty percent (80%) of such collections shall be credited to the forest resources development fund and twenty percent (20%) of such collections shall be returned to the counties from which the timber or its products was severed. The state treasurer upon receipt of said funds shall transfer those funds to be credited to the forest resources development fund and shall remit the counties' share of said funds on or before the fifteenth day of the month next succeeding the month in which such collections are made.

The commissioner shall determine amounts due the counties from which the timber or its products was severed and shall certify to the state treasurer the amount due each county or special fund. The state treasurer shall requisition moneys from such accounts in such amounts as determined and certified by the commissioner. The state auditor shall deliver the warrant to the state treasurer, who shall transfer such funds to each county or special fund by warrant or by electronic funds transfer on the due date.

The commissioner shall deliver on or before the fifteenth day of the month next succeeding the month in which such collections are made, a report to the county receiving said funds, showing from whom said tax was collected. Upon receipt of said funds the county shall place same to the credit of its general fund, to be expended as follows: The moneys placed in the general fund of the counties by this article, not required by law to be otherwise expended, may, in the discretion of the boards of supervisors, be expended in maintaining county roads and bridges or for retiring general county bonds and they are hereby authorized to apportion these funds to the various taxing districts of the county in a just and equitable manner for the payment of bonds and interest, or school and road maintenance purposes, in proportion to the amount of timber or its products severed therefrom. Provided further, that any additional funds which accrue to any county as a result of the increase in tax provided in this article shall not be chargeable to the county in determining the state funds needed annually to support the minimum educational program under Section 37-19-37.

SOURCES: Codes, 1942, § 9404-06; Laws, 1956, ch. 414, § 6; Laws, 1974, ch. 548 § 2; Laws, 1977, ch. 486, § 28; Laws, 1981, ch. 457, § 2; Laws, 1984, ch. 478, § 15, eff from and after July 1, 1984.

Editor's Note — Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, provides:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Section 37-19-37, referred to in the last paragraph, was repealed by Section 30 of Chapter 612, Laws of 1997. It related to the determination of the state funds needed annually to support the minimum education program.

Cross References — State Tax Commission as meaning the Department of Revenue, see § 27-25-3.

Forest resource development fund, consisting of portion of privilege taxes on timber and timber products, see § 49-19-227.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses § 106.

§ 27-25-13. Timber severed from government lands.

Liability for the tax imposed by this article shall apply to any person who shall sever any timber or timber products from government-owned land or lands, either state or federal, in event the timber or timber products severed enter commercial channels of trade or competitive markets.

SOURCES: Codes, 1942, § 9404-07; Laws, 1956, ch. 414, § 7.

§ 27-25-15. Title in dispute.

When the title to any timber or timber products being produced or severed from the soil or water, is in dispute, or whenever the purchaser of such timber or timber products, or any person engaged in the producing or severing of timber or timber products from the soil or water, shall be withholding payments on account of litigation, or for any other reason, such purchaser of timber or timber products, or person actually engaged in producing or severing such timber or timber products, is hereby authorized, empowered and required to deduct from the gross amount thus held the amount of the tax herein levied, and to make remittance thereof to the commissioner, as provided by this article.

SOURCES: Codes, 1942, § 9404-08; Laws, 1956, ch. 414, § 8.

§ 27-25-17. Returns; records; penalty.

Every person producing or severing timber or timber products from the soil or water in this state, shall, when making the reports required by this article, file with the commissioner a statement, under oath, on forms prescribed by him of the business conducted by such person during the period for which the report is made, showing the kind of timber or timber products and the gross quantity and value thereof so severed or produced, and such other reasonable and necessary information pertaining thereto as the commissioner may require for the proper enforcement of the provisions of this article.

All persons engaged in the business of purchasing or manufacturing, in whole or in part, any timber or timber products in this state, shall make and keep for a period of three years, a complete and accurate record showing the gross quantity of timber or timber products purchased, the value thereof, the names of the persons from whom purchased, the time of purchase, the county in which severed and any other information which the commissioner may require. Any person failing to make the report required by this section shall be guilty of a misdemeanor and be punished by a fine of not less than Fifty Dollars ($50.00), nor more than Five Hundred Dollars ($500.00), for each such offense.

SOURCES: Codes, 1942, § 9404-09; Laws, 1956, ch. 414, § 9.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-25-19. Carriers; records; removal from state without permit or payment of tax penalized.

When requested by the commissioner, all transporters (railroads, motor vehicles, or other interstate commerce carriers) of timber or timber products which are subject to the tax herein imposed, out of, within, or across the State of Mississippi, shall be required to furnish the commissioner such information relative to the transportation of such timber or timber products as may be necessary to carry out the provisions of this article.

(a) The commissioner shall have authority to inspect bills of lading, waybills, or other similar documents, and such books and records as may relate to the transportation of timber or timber products in the hands of such transporter out of, within, or across the state; and the commissioner shall further be empowered to demand the production of such bills of lading, waybills, or other similar documents and books and records relating to the transportation of timber or timber products at any point in the State of Mississippi which he may designate.

(b) The removal by the owner or owners, transporters, purchasers, or producers of timber or timber products, except interstate commerce carriers, from the state without first paying all severance tax that might be due, or obtaining from the commissioner or his duly authorized agent, in advance, written approval or permit to remove from the state any of the timber resources taxed by this article, shall be guilty of a misdemeanor and, upon conviction, be fined not less than Fifty Dollars ($50.00), nor more than Five Hundred Dollars ($500.00), for each such offense.

(c) The commissioner, or his duly authorized agent, shall have the right and authority to assess and collect any severance tax found to be due and unpaid, at the point of removal from the state, upon all timber or timber products found being removed from the state and shall assess, in addition to the tax found due, interest at the rate of six per centum (6%) per annum, together with penalties and damages in an amount not to exceed Fifty Dollars ($50.00), and not to be less than Five Dollars ($5.00), upon any severer, producer, owner, purchaser, or transporter (except interstate commerce carriers), found to be removing timber or timber products from the state.

Provided, however, that in cases of interstate commerce carriers, duly qualified as such and having a permit to conduct such operations, using bills of lading or waybills prescribed or approved by the interstate commerce commission, such common carriers shall only be required to keep the usual records at an office or offices in this state where such records are usually kept.

SOURCES: Codes, 1942, § 9404-10; Laws, 1956, ch. 414, § 10.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-25-21. Additional information.

The commissioner shall have the power to require any person engaged in producing or severing timber or timber products, from the soil or water, to furnish any additional information deemed by him to be necessary for the purpose of computing the amount of said tax. The commissioner shall have the power to examine the books, records, letters, papers, documents, and all files of such persons for the purpose of assessing the tax; and, to that end, shall have the power to examine witnesses, and if any such witness shall fail or refuse to appear at the request of the commissioner, or refuse access to books, records, letters, papers, documents and files, said commissioner shall have the power and authority to proceed as provided by the Mississippi Sales Tax Law.

SOURCES: Codes, 1942, § 9404-11; Laws, 1956, ch. 414, § 11.

Cross References — Sales tax law, see § 27-65-1 et seq.

§ 27-25-23. When tax due and payable; returns; penalty; administration.

The taxes levied hereunder shall be due and payable in monthly installments, on or before the fifteenth day of the month next succeeding the month in which the tax accrues. The person liable for the tax shall, on or before the fifteenth day of the month, make out a return on the form prescribed, showing the amount of the tax for which he is liable for the preceding month, and shall mail or send the same, together with a remittance for the amount of the tax, to the office of the commissioner. Provided, however, that when the total tax for which any person is liable under this article does not exceed the sum of Three Thousand Six Hundred Dollars ($3,600.00) a year, a quarterly return and remittance, in lieu of the monthly return, may be made on or before the fifteenth day of the month next succeeding the end of the quarter for which the tax is due. Such return shall be signed by the taxpayer or a duly authorized agent of the taxpayer.

All administrative provisions and definitions of the Mississippi Sales Tax Law, including those imposing penalties, interest and damages for failure to pay taxes imposed, and all other requirements and duties imposed upon taxpayers under said chapter, shall apply with like force and effect to all persons liable for taxes under the provisions of this article, and the commissioner shall exercise all power and authority and perform all the duties with respect to taxpayers under this article as are provided in said Mississippi Sales Tax Law. In case of conflict between the provisions of this article and any provisions of said sales tax law, then the provisions of this article shall control.

Provided, that in the case of persistent or willful failure to make any return and pay the tax shown to be due, damages of not less than ten percent (10%), nor more than twenty-five percent (25%), shall be assessed and collected by the commissioner, in addition to all other penalties. All damages collected on timber or timber products hereunder shall be disbursed to the state and counties on the basis of one half to the county in which severed, and one half to the state.

SOURCES: Codes, 1942, § 9404-12; Laws, 1956, ch. 414, § 12; Laws, 1997, ch. 397, § 1, eff from and after July 1, 1997.

Cross References — Action to recover tax, penalty and interest, see § 27-35-5.
Sales tax law, see § 27-65-1 et seq.

§ 27-25-25. Procedure where owner pays tax direct to tax commissioner; withholding tax in case of purchases by supervisors.

If any person engaged in the business of felling, logging, manufacturing, processing or otherwise handling of timber or timber products severed from the soil or water, or in purchasing timber or timber products shall fail to remit to the commissioner, as required, the tax imposed by this article for the reason that the owner of such timber or timber products is paying the tax direct to the tax commissioner, then such person shall report to the commissioner, on forms prescribed by him, the kinds and quantities of timber or timber products upon which the tax was not paid. Such reports shall be made at the end of each calendar month.

When any board of supervisors, or any members thereof, of any county in the state shall purchase any timber or timber products upon which the tax has not been paid, then the said board of supervisors shall file the reports and remit the tax due to the commissioner in the same manner as is required of other taxpayers.

SOURCES: Codes, 1942, § 9404-13; Laws, 1956, ch. 414, § 13.

§ 27-25-27. Exemption from ad valorem taxes.

On and after December 31, 1955, all growing, standing timber, trees and shrubs in the State of Mississippi, or any county, municipality, levee district, or other taxing district therein, shall be exempt from all ad valorem taxes. And such timber, trees and shrubs after severance shall be exempt from ad valorem taxes so long as such timber, trees, or shrubs shall remain in the log state, or unmanufactured condition and so long as the title thereto shall remain in any person other than the manufacturer or processor thereof.

SOURCES: Codes, 1942, § 9404-14; Laws, 1956, ch. 414, § 14.

Cross References — Ad valorem tax exemption generally, see § 27-31-1 et seq.

RESEARCH REFERENCES

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

ARTICLE 3.

SALT SEVERANCE TAX.

SEC.	
27-25-301.	Short title.
27-25-303.	Definitions.
27-25-305.	Tax levied.
27-25-307.	Ad valorem exemptions.
27-25-309.	Records.
27-25-311.	Distribution of tax.
27-25-313.	Returns.
27-25-315.	Administration.

§ 27-25-301. Short title.

This article may be cited as the "Mississippi Salt Severance Tax Law."

SOURCES: Codes, 1942, § 9405-01; Laws, 1962, ch. 592, § 1, eff from and after June 1, 1962.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 520.

CJS. 58 C.J.S., Mines and Minerals §§ 445-449.

§ 27-25-303. Definitions.

The words, terms and phrases used in this article shall have the meanings ascribed to them herein.

(a) "Tax commission, " "State Tax Commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner" or "Chairman of the State Tax Commission" means the Commissioner of Revenue of the Department of Revenue.

(c) "Person" means and includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust or other group or combination acting as a unit, and includes the plural as well as the singular in number.

(d) "Taxpayer" means any person liable for or having paid any tax to the State of Mississippi under the provisions of this article.

(e) "Producer" means any person who produces or severs or who is responsible for the production of salt from the earth or water for sale, profit or commercial use.

(f) "Production" means the total amount or quantity of marketable salt produced by whatever measurement used.

(g) "Value" means and includes the purchase price or royalty, cost, and any other expense as determined by generally accepted accounting principles of underground mining and handling of production to the point where processing begins.

(h) "Processing" means an activity of an industrial or commercial nature wherein labor or skill is applied, by hand or machinery, to raw materials so that a more useful product or substance of trade or commerce is produced for sale.

(i) "Engaging in business" means any act or acts engaged in by producers, or parties at interest which results in the production of salt from the soil or water, for storage, transport or further processing.

(j) "Salt" means a substance which is chemically classified as sodium chloride.

SOURCES: Codes, 1942, § 9405-02; Laws, 1962, ch. 594, § 2; Laws, 2009, ch. 492, § 62, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue, see § 27-3-1 et seq.

Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue of the Department of Revenue, see § 27-3-4.

§ 27-25-305. Tax levied.

There is hereby levied and assessed, and shall be collected by the commissioner, privilege taxes upon every person engaging or continuing within this state in the business of mining, severing or otherwise producing salt or causing it to be produced, for sale, profit or commercial use. The amount of such tax shall be three percent (3%) of the value of the entire production in this state.

The tax is hereby levied upon the entire production in this state regardless of the place of sale or the fact that delivery may be made to points outside the state, and the tax shall accrue at the time such salt is severed from the soil or water, and in its natural, unrefined or unprocessed state.

The tax levied hereunder shall be a lien upon all products produced within this state and such lien shall be entitled to preference over all judgments, executions, encumbrances or liens whensoever created.

SOURCES: Codes, 1942, § 9405-03; Laws, 1962, ch. 594, § 3, eff from and after June 1, 1962.

Cross References — As to refund of taxes, generally, see § 27-73-1 et seq.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 520.

CJS. 53 C.J.S., Licenses §§ 65-70.

58 C.J.S., Mines and Minerals §§ 445-449.

§ 27-25-307. Ad valorem exemptions.

All salt under the ground or salt produced or processed on producing properties and owned by the producer and all leases in production, including mineral rights in producing properties, shall be exempt from all ad valorem taxes now levied or hereafter levied by the State of Mississippi, or any county, or any other taxing district within this state.

SOURCES: Codes, 1942, § 9405-04; Laws, 1962, ch. 594, § 4, eff from and after June 1, 1962.

Cross References — Ad valorem tax exemption of nonproducing gas, oil and mineral interests, see § 27-31-73.

§ 27-25-309. Records.

Every person engaged in the business of producing salt in this state, or who is in charge of production operations, and who is required to pay the tax imposed by this article, shall make and keep, for a period of three (3) years, a complete and accurate record to substantiate all taxes accrued hereunder, showing the gross quantity of salt produced and the value of same, the names of the person or persons from whom purchased and the county in which located. All records shall be subject to examination by the commissioner.

The commissioner may promulgate such rules and regulations not inconsistent with this article and the Mississippi Sales Tax Law for keeping records, making returns and for the ascertainment, assessment and collection of the tax imposed hereunder as he may deem necessary to enforce its provisions.

SOURCES: Codes, 1942, § 9405-05; Laws, 1962, ch. 594, § 5, eff from and after June 1, 1962.

Cross References — Sales tax law, see § 27-65-1 et seq.

§ 27-25-311. Distribution of tax.

All taxes, damages or interest collected hereunder shall be paid into the state treasury by the state tax commission on the same day collected by it. The chairman of the state tax commission shall apportion such funds with one-half (½) going to the county in which the salt was produced and he shall certify such apportionment at the end of each month. The state treasurer shall remit to the county its share of said taxes, damages and interest on or before the twentieth day of the month next succeeding the month in which such collections were made.

The amount returned to the county may be divided among the supervisors districts by the board in consideration of the needs of the various districts and used for any authorized purpose.

SOURCES: Codes, 1942, § 9405-06; Laws, 1962, ch. 594, § 6; Laws, 1984, ch. 478, § 16, eff from and after July 1, 1984.

Editor's Note — Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, provides:

"SECTION 35. "The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Cross References — Boards of supervisors generally, see § 19-3-1 et seq.

"State tax commission" as meaning the Department of Revenue, see § 27-25-303.

§ 27-25-313. Returns.

The taxes levied by this article shall be due and payable on or before the twentieth day of the month next succeeding the month in which the tax accrues. The taxpayer shall make a return on a form provided by the commissioner showing the period covered, the amount and value of the production for the period, the county in which produced and such other information as the commissioner may require. The taxpayer shall compute the tax due for the period and file the return, together with remittance to cover.

SOURCES: Codes, 1942, § 9405-07; Laws, 1962, ch. 594, § 7, eff from and after June 1, 1962.

Cross References — Action to recover tax, penalty and interest, see § 27-35-5.

§ 27-25-315. Administration.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes and for noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this article, and the commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this article as are provided in said Mississippi Sales Tax Law, except where there is conflict, then the provisions of this article shall control. Any adjustment of taxes, damages or interest with any county necessary to correct any error, may be made on a subsequent disbursement to that county.

SOURCES: Codes, 1942, § 9405-08; Laws, 1962, ch. 594, § 8, eff from and after June 1, 1962.

Cross References — Sales tax law, see § 27-65-1 et seq.

Article 5.

Oil Severed or Produced in State.

Sec.

27-25-501. Definitions.
27-25-503. Privilege tax levied; exemptions [Paragraph (1)(c) repealed effective July 1, 2018].
27-25-505. Distribution of tax.
27-25-506. Special fund for deposit of state's share of oil and gas severance taxes collected; deposits into Budget Contingency Fund.
27-25-507. Escaped oil; additional collection pending claims of ownership.
27-25-509. Payment of tax; persons liable; lien.
27-25-511. Title in dispute.
27-25-513. Returns; oath.
27-25-515. Carriers; records.
27-25-517. Additional information.
27-25-519. Returns; administration.
27-25-521. Records; penalty.
27-25-523. Ad valorem exemptions.
27-25-525. Constitutionality.

§ 27-25-501. Definitions.

Whenever used in this article, the following words and terms shall have the definition and meaning ascribed to them in this section, unless the intention to give a more limited meaning is disclosed by the context:

(a) "Tax commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(c) "Annual" means the calendar year or the taxpayer's fiscal year when permission is obtained from the commissioner to use a fiscal year as a tax period in lieu of a calendar year.

(d) "Value" means the sale price, or market value, at the mouth of the well. If the oil is exchanged for something other than cash, or if there is no sale at the time of severance, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the commissioner shall determine the value of the oil subject to tax, considering the sale price for cash of oil of like quality. With respect to salvaged crude oil as hereinafter defined, the term "value" shall mean the sale price or market value of such salvaged crude oil at the time of its sale after such salvaged crude oil has been processed or treated so as to render it marketable.

(e) "Taxpayer" means any person liable for the tax imposed by this article. With respect to the tax imposed upon salvaged crude oil as hereafter defined, the term "taxpayer" shall mean the person having title to the salvaged crude oil at the time it is being processed or treated so as to render it marketable.

(f) "Oil" means petroleum, other crude oil, natural gasoline, distillate, condensate, casinghead gasoline, asphalt or other mineral oil which is mined, or produced, or withdrawn from below the surface of the soil or water, in this state. Any type of salvaged crude oil which, after any treatment, becomes marketable shall be defined as crude oil which has been severed from the soil or water.

(g) "Severed" means the extraction or withdrawing from below the surface of the soil or water of any oil, whether such extraction or withdrawal shall be by natural flow, mechanically enforced flow, pumping or any other means employed to get the oil from below the surface of the soil or water, and shall include the withdrawing by any means whatsoever of oil upon which the tax has not been paid, from any surface reservoir, natural or artificial, or from a water surface. Provided, however, that in the case of salvaged crude oil, "severed" means the process of treating such oil so that it will become marketable and the time of severance shall occur upon completion of the treatment.

(h) "Person" means any natural person, firm, copartnership, joint venture, association, corporation, estate, trust or any other group, or combination acting as a unit, and the plural as well as the singular number.

(i) "Producer" means any person owning, controlling, managing or leasing any oil property, or oil well, and any person who produces in any manner any oil by taking it from the earth or water in this state, and shall include any person owning any royalty or other interest in any oil or its value, whether produced by him, or by some other person on his behalf, either by lease contract or otherwise.

(j) "Engaging in business" means any act or acts engaged in (personal or corporate) by producers, or parties at interest, the result of which, oil is severed from the soil or water, for storage, transport or manufacture, or by which there is an exchange of money, or goods, or thing of value, for oil which has been or is in process of being severed, from the soil or water.

(k) "Barrel" for oil measurement, means a barrel of forty-two (42) United States gallons of two hundred thirty-one (231) cubic inches per gallon, computed at a temperature of sixty (60) degrees Fahrenheit.

(*l*) "Production" means the total gross amount of oil produced, including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this article shall be measured or determined by tank tables compiled to show one hundred percent (100%) of the full capacity of tanks without deduction for overage or losses in handling. Allowance for any reasonable and bona fide deduction for basic sediment and water, and for correction of temperature to sixty (60) degrees Fahrenheit will be allowed. If the amount of oil produced has been measured or determined by tank tables compiled to show less than one hundred percent (100%) of the full capacity of tanks, then such amount shall be raised to a basis by one hundred percent (100%) for the purpose of the tax imposed by this article.

(m) "Gathering system" means the pipelines, pumps and other property used in gathering oil from the property on which it is produced, the tanks used for storage at a central place, loading racks and equipment for loading oil into tank cars or other transporting media, and all other equipment and appurtenances necessary to a gathering system for transferring oil into trunk pipelines.

(n) "Discovery well" means any well producing oil from a single pool in which a well has not been previously produced in paying quantities after testing.

(o) "Development wells" means all oil producing wells other than discovery wells and replacement wells.

(p) "Replacement well" means a well drilled on a drilling and/or production unit to replace another well which is drilled in the same unit and completed in the same pool.

(q) "Three-dimensional seismic" means data which is regularly organized in three (3) orthogonal directions and thus suitable for interpretation with a three-dimensional software package on an interactive work station.

(r) "Two-year inactive well" means any oil or gas well certified by the State Oil and Gas Board as having not produced oil or gas in more than a total of thirty (30) days during a twelve-consecutive-month period in the two (2) years before the date of certification.

(s) "Horizontally drilled well" means a well in which the deviation of the borehole is at least eighty degrees (80°) from vertical so that the borehole penetrates a productive formation in a manner parallel to the formation and in which there is at least one thousand (1,000) feet of lateral penetration through productive reservoirs.

(t) "Horizontally drilled recompletion well" means an existing well in which the deviation of the borehole is at least eighty degrees (80°) from vertical so that the borehole penetrates a productive formation in a manner parallel to the formation and in which there is at least one thousand (1,000) feet of lateral penetration through productive reservoirs.

SOURCES: Codes, 1942, § 9417-01; Laws, 1944, ch. 134, § 1; Laws, 1983, ch. 503, § 1; Laws, 1994, ch. 545, § 1; Laws, 1995, ch. 531, § 1; Laws, 2009, ch. 492, § 63; Laws, 2013, ch. 533, § 1, eff from and after July 1, 2013.

Editor's Note — Laws of 1994, ch. 545, § 8, effective April 1, 1994, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the oil and gas severance tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the oil and gas severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1995, ch. 531, § 5, provides as follows:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the oil and gas severance tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the oil and gas severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Inclusion of value of oil at point of production in total assessed valuation of county for purposes of provisions relative to salaries of tax assessors who also serve as tax collectors, see § 25-3-3.

Department of Revenue, see § 27-3-1 et seq.

Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue of the Department of Revenue, see § 27-3-4.

Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

Tax imposed for administration expenses of state oil and gas board, see § 53-1-73.

JUDICIAL DECISIONS

1. In general.
2. Person.

1. In general.

When lessors, under a lease which granted them the privilege of taking their royalties in kind, entered into a contract with the purchases of oil for the consideration of their forbearance to exercise this right, and agreed to accept an additional payment of 25 cents per barrel over and above the posted field price for crude oil, the additional per barrel payment represented a part of the value of the royalty oil of the lessors and is taxable under Code 1942, § 9417-02. Bass Dev. Corp. v. Mississippi State Tax Comm'n, 271 So. 2d 432 (Miss. 1973).

Where an amendment to the 1944 Act entitled the town of Heidelberg to one-third of oil severance taxes returned to Jasper County by reducing the amount payable of one-third of tax which was produced in the municipality, the amendment was not unconstitutional and it did not impair the town's obligation of contracts which it held with holders of water and sewer system bonds issued under resolution of mayor and board of aldermen, pledging 75 per cent of all revenue selected by the town under 1944 Act or any amendments or substitutes therefor to retire the bonds. Town of Heidelberg v. Jasper County, 218 Miss. 147, 65 So. 2d 463 (1953).

Levying of an annual privilege tax upon every group acting as a unit engaged in the business of producing or severing oil for commercial purposes is not unconstitutional as being violative of § 112 of the Constitution which provides that taxation shall be uniform and equal throughout the state and that property shall be assessed for taxes under general laws and by uniform rules according and in proportion to its true value. Gulf Ref. Co. v. Stone, 197 Miss. 713, 21 So. 2d 19 (1945).

Oil severance tax may be validly imposed upon royalty holders even though they took no personal part in the severance occupation, as against contention that such is an arbitrary legislative fiat. Gulf Ref. Co. v. Stone, 197 Miss. 713, 21 So. 2d 19 (1945).

2. Person.

Miss. Code Ann. §§ 27-25-501(h) and 27-25-701(i) show that a different meaning of "person" than that contained in Miss. Code Ann. § 1-3-39 was intended for the purposes of oil and gas severance taxation. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

Oil and gas severance taxes levied under Miss. Code Ann. §§ 27-25-501 to 27-25-525 and 27-25-701 to 27-25-723 did not apply to a school district because the school district did not meet the definition of "person" set forth in Miss. Code Ann. §§ 27-25-501(h) and 27-25-701(i), and there was nothing in the statutes indicating that the school district was subject to oil and gas severance taxes by necessary implication. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

§ 27-25-503. Privilege tax levied; exemptions [Paragraph (1)(c) repealed effective July 1, 2018].

(1)(a) Except as otherwise provided in this section, there is levied, to be collected as provided in this article, annual privilege taxes upon every person engaging or continuing within this state in the business of producing, or severing oil from the soil or water for sale, transport, storage, profit or for commercial use. The amount of the tax shall be measured by the value of the oil produced, and shall be levied and assessed at the rate of six percent (6%) of the value of the oil at the point of production.

(b) The tax shall be levied and assessed at the rate of three percent (3%) of the value of the oil at the point of production on oil produced by an enhanced oil recovery method in which carbon dioxide is used; provided, that such carbon dioxide is transported by pipeline to the oil well site and on oil produced by any other enhanced oil recovery method approved and permitted by the State Oil and Gas Board on or after April 1, 1994, pursuant to Section 53-3-101 et seq.

(c)(i) The tax shall be levied and assessed at the rate of one and three-tenths percent (1.3%) of the value of the oil at the point of production on oil produced from a horizontally drilled well or from any horizontally drilled recompletion well from which production commences from and after July 1, 2013, for a period of thirty (30) months beginning on the date of first sale of production or until payout of the well cost is achieved, whichever first occurs. Thereafter, the tax shall be levied and assessed as provided for in paragraph (a) of this subsection.

(ii) Payout of a horizontally drilled well or horizontally drilled recompletion well shall be deemed to have occurred the first day of the next month after gross revenues, less royalties and severance taxes, equal to the cost to drill and complete the well.

(iii) Each operator must apply by letter to the State Oil and Gas Board for the reduced rate provided in this paragraph (c), and shall provide the board with the status of payout on a semiannual basis of any horizontally drilled well or horizontally drilled recompletion well by signed affidavit executed by a company representative.

(iv) This paragraph (c) shall be repealed from and after July 1, 2018; however, any horizontally drilled well or horizontally drilled recompletion well from which production commences before July 1, 2018, shall be taxed as provided for in this paragraph (c) notwithstanding that the repeal of this paragraph (c) has become effective.

(2) The tax is levied upon the entire production in this state regardless of the place of sale or to whom sold, or by whom used, or the fact that the delivery may be made to points outside the state, and the tax shall accrue at the time the oil is severed from the soil, or water, and in its natural, unrefined or unmanufactured state.

(3)(a) Oil produced from a discovery well for which drilling or re-entry commenced on or after April 1, 1994, but before July 1, 1999, shall be exempt from the taxes levied under this section for a period of five (5) years beginning on the date of first sale of production from such well, provided that the average monthly sales price of such oil does not exceed Twenty-five Dollars ($25.00) per barrel. The exemption for oil produced from a discovery well as described in this paragraph (a) shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be exempt for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective. Oil produced from development wells or replacement wells drilled in connection with discovery wells for which drilling commenced on or after January 1, 1994, but before July 1, 1999, shall be assessed at the rate of three percent (3%) of the value of the oil at the point of production for a period of three (3) years. The reduced rate of assessment of oil produced from development wells or replacement wells as described in this paragraph (a) shall be repealed from and after January 1, 2003, provided that any such production for which drilling commenced before January 1, 2003, shall be assessed at the reduced rate for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(b) Oil produced from a discovery well for which drilling or re-entry commenced on or after July 1, 1999, shall be assessed at the rate of three percent (3%) of the value of the oil at the point of production for a period of five (5) years beginning on the date of first sale of production from such well, provided that the average monthly sales price of such oil does not exceed Twenty Dollars ($20.00) per barrel. The reduced rate of assessment of oil produced from a discovery well as described in this paragraph (b) shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be assessed at the reduced rate for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective. Oil produced from development wells or replacement wells drilled in connection with discovery wells for which drilling commenced on or after July 1, 1999, shall be assessed at the rate of three percent (3%) of the value of the oil at the point of production for a period of three (3) years. The reduced rate of assessment of oil produced from development wells or replacement wells as described in this paragraph (b) shall be repealed from and after January 1, 2003, provided that any such production for which drilling commenced before July 1, 2003, shall be assessed at the reduced rate for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(4)(a) Oil produced from a development well for which drilling commenced on or after April 1, 1994, but before July 1, 1999, and for which three-dimensional seismic was utilized in connection with the drilling of such well shall be assessed at the rate of three percent (3%) of the value of the oil at the point of production for a period of five (5) years, provided that the average monthly sales price of such oil does not exceed Twenty-five Dollars ($25.00) per barrel. The reduced rate of assessment of oil produced from a development well as described in this paragraph (a) and for which three-dimensional seismic was utilized shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be assessed at the reduced rate for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective.

(b) Oil produced from a development well for which drilling commenced on or after July 1, 1999, and for which three-dimensional seismic was utilized in connection with the drilling of such well shall be assessed at the rate of three percent (3%) of the value of the oil at the point of production for a period of five (5) years, provided that the average monthly sales price of such oil does not exceed Twenty Dollars ($20.00) per barrel. The reduced rate of assessment of oil produced from a development well as described in this paragraph (b) and for which three-dimensional seismic was utilized shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be assessed at the reduced rate for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective.

(5)(a) Oil produced before July 1, 1999, from a two-year inactive well as defined in Section 27-25-501 shall be exempt from the taxes levied under this section for a period of three (3) years beginning on the date of first sale of production from such well, provided that the average monthly sales price of such oil does not exceed Twenty-five Dollars ($25.00) per barrel. The exemption for oil produced from an inactive well shall be repealed from and after July 1, 2003, provided that any such production which began before July 1, 2003, shall be exempt for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(b) Oil produced on or after July 1, 1999, from a two-year inactive well as defined in Section 27-25-501 shall be exempt from the taxes levied under this section for a period of three (3) years beginning on the date of first sale of production from such well, provided that the average monthly sales price of such oil does not exceed Twenty Dollars ($20.00) per barrel. The exemption for oil produced from an inactive well shall be repealed from and after July 1, 2003, provided that any such production which began before July 1, 2003, shall be exempt for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(6) [Repealed]

(7) The State Oil and Gas Board shall have the exclusive authority to determine the qualification of wells defined in paragraphs (n) through (t) of Section 27-25-501.

SOURCES: Codes, 1942, § 9417-02; Laws, 1944, ch. 134, § 2; Laws, 1984, ch. 451, § 1; Laws, 1987, ch. 428, § 1; Laws, 1988, ch. 485, § 1; Laws, 1989, ch. 520, § 1; Laws, 1994, ch. 545, § 2; Laws, 1995, ch. 531, § 2; Laws, 1999, ch. 523, § 1; Laws, 2013, ch. 533, § 2, eff from and after July 1, 2013.

Editor's Note — Laws of 1987, ch. 428, § 3, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gas or oil severance tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the gas or oil severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1994, ch. 545, § 8, effective April 1, 1994, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the oil and gas severance tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the oil and gas severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1995, ch. 531, § 5, provides as follows:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the oil and gas severance tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the oil and gas severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Former (6) was repealed by its own terms, effective July 1, 2003.

Cross References — "State tax commission" as meaning the Department of Revenue, see § 27-25-501.

Tax collections made pursuant to paragraph (1)(c) of this section to be apportioned to the county in which the oil was produced, see § 27-25-505.

Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

Tax on severed natural gas, see § 27-25-701 et seq.

Refund of taxes generally, see §§ 27-73-1 et seq.

JUDICIAL DECISIONS

1. In general.

When lessors, under a lease which granted them the privilege of taking their royalties in kind, entered into a contract with the purchases of oil for the consideration of their forbearance to exercise this right, agreed to accept an additional payment of 25 cents per barrel over and above the posted field price for crude oil, the additional per barrel payment represented a part of the value of the royalty oil of the lessors and is taxable under Code 1942, § 9417-02. Bass Dev. Corp. v. Mississippi State Tax Comm'n, 271 So. 2d 432 (Miss. 1973).

Levying of an annual privilege tax upon every group acting as a unit engaged in the business of producing or severing oil for commercial purposes is not unconstitutional as violating § 112 of the Constitution providing that taxation shall be uniform and equal throughout the state, and that property shall be assessed for taxes under general laws and by uniform rules according and in proportion to its true value. Gulf Ref. Co. v. Stone, 197 Miss. 713, 21 So. 2d 19 (1945).

Oil severance tax may be validly imposed upon royalty holders who took no part in the severance occupation, as against contention that such is an arbitrary legislative fiat. Gulf Ref. Co. v. Stone, 197 Miss. 713, 21 So. 2d 19 (1945).

ATTORNEY GENERAL OPINIONS

A school district would not be subject to the privilege tax listed in Section 27-25-503. Long, May 10, 1996, A.G. Op. #96-0258.

In order to be entitled to an exemption from severance taxes pursuant to Section 27-25-503, there cannot have been more than thirty days of oil or gas production in any twelve consecutive months within twenty-four months of the date of certification from the State Oil and Gas Board. Posey, November 8, 1996, A.G. Op. #96-

0708.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 520.

CJS. 53 C.J.S., Licenses §§ 102, 106.

58 C.J.S., Mines and Minerals §§ 445-449.

Law Reviews. The effect of Bankruptcy anc Encumbrances on Mineral Interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 27-25-505. Distribution of tax.

[With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

(1) All taxes levied in this article and collected by the Department of Revenue shall be paid into the State Treasury on the same day collected.

(2) Except as otherwise provided in this section, the commissioner shall apportion all the tax collections made pursuant to this article to the state and to the county in which the oil was produced, in accordance with the following schedule and so certify such apportionment to the State Treasurer at the end of each month:

On the first Six Hundred Thousand Dollars ($600,000.00) or any part thereof, sixty-six and two-thirds percent (66-⅔%) to the state and thirty-three and one-third percent (33-⅓%) to the county.

Above and exceeding Six Hundred Thousand Dollars ($600,000.00), or any part thereof, ninety percent (90%) to the state and ten percent (10%) to the county through June 30, 1989; eighty-five percent (85%) to the state and fifteen percent (15%) to the county from July 1, 1989, through June 30, 1990; eighty percent (80%) to the state and twenty percent (20%) to the county from July 1, 1990, through June 30, 2015; seventy-nine percent (79%) to the state and twenty-one percent (21%) to the county from July 1, 2015, through June 30, 2016; seventy-eight percent (78%) to the state and twenty-two percent (22%) to the county from July 1, 2016, through June 30, 2017; seventy-seven percent (77%) to the state and twenty-three percent (23%) to the county from July 1, 2017, through June 30, 2018; seventy-six percent (76%) to the state and twenty-four percent (24%) to the county from July 1, 2018, through June 30, 2019; and seventy-four percent (74%) to the state and twenty-six percent (26%) to the county for each fiscal year thereafter.

(3) The state's share of all oil severance taxes collected pursuant to this article shall be deposited as provided for in Section 27-25-506.

(4) The commissioner shall apportion all the tax collections made pursuant to Section 27-25-503(1)(c) to the county in which the oil was produced.

(5) The State Treasurer shall remit the county's share of taxes collected pursuant to this article on or before the twentieth day of the month next succeeding the month in which the collections were made, for division among the municipalities and taxing districts of the county. He shall accompany his

remittance with a report to the county receiving the funds prepared by the commissioner showing from whom the tax was collected. Upon receipt of the funds, the board of supervisors of the county shall allocate the funds to the municipalities and to the various maintenance and bond and interest funds of the county, school districts, supervisors districts and road districts, as provided in this subsection.

(6) Except as provided in subsection (8) of this section, when there are any oil producing properties within the corporate limits of any municipality, then the municipality shall participate in the division of the tax returned to the county in which the municipality is located, in the proportion which the tax on production of oil from any properties located within the municipal corporate limits bears to the tax on the total production of oil in the county. In no event, however, shall the amount allocated to municipalities exceed one-third (⅓) of the tax produced in the municipality and returned to the county. Any amount received by any municipality as a result of the allocation provided for in this subsection shall be used only for such purposes as are authorized by law.

(7) Except as provided in subsection (8) of this section, the balance remaining of any amount of tax returned to the county after the allocation to municipalities shall be divided among the various maintenance and bond interest funds of the county, school districts, supervisors districts and road districts, in the discretion of the board of supervisors, and the board shall make the division in consideration of the needs of the various taxing districts. The funds so allocated shall be used only for purposes as are authorized by law.

(8) Any amount above and exceeding Six Hundred Thousand Dollars ($600,000.00) that is remitted to the county that is more than twenty percent (20%) of the taxes above and exceeding Six Hundred Thousand Dollars ($600,000.00) collected on oil produced in the county, shall be utilized by the county for infrastructure repairs.

[With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

(1) All taxes levied in this article and collected by the Department of Revenue shall be paid into the State Treasury on the same day collected.

(2) Except as otherwise provided in this section, the commissioner shall apportion all the tax collections made pursuant to this article to the state and to the county in which the oil was produced, in accordance with the following schedule and so certify such apportionment to the State Treasurer at the end of each month:

On the first Six Hundred Thousand Dollars ($600,000.00) or any part thereof, sixty-six and two-thirds percent (66-⅔%) to the state and thirty-three and one-third percent (33-⅓%) to the county.

Above and exceeding Six Hundred Thousand Dollars ($600,000.00), or any part thereof, ninety percent (90%) to the state and ten percent (10%) to the county through June 30, 1989; eighty-five percent (85%) to the state and fifteen percent (15%) to the county from July 1, 1989, through June 30, 1990; eighty percent (80%) to the state and twenty percent (20%) to the county from July 1, 1990, through June 30, 2015; seventy-nine percent (79%) to the state and twenty-one percent (21%) to the county from July 1, 2015, through June 30, 2016; seventy-eight percent (78%) to the state and twenty-two percent (22%) to the county from July 1, 2016, through June 30, 2017; seventy-seven percent (77%) to the state and twenty-three percent (23%) to the county from July 1, 2017, through June 30, 2018; seventy-six percent (76%) to the state and twenty-four percent (24%) to the county from July 1, 2018, through June 30, 2019; and seventy-four percent (74%) to the state and twenty-six percent (26%) to the county for each fiscal year thereafter.

(3) The state's share of all oil severance taxes collected pursuant to this article shall be deposited as provided for in Section 27-25-506.

(4) The commissioner shall apportion all the tax collections made pursuant to the tax levied in Section 27-25-503(1)(c) to the county in which the oil was produced.

(5) The State Treasurer shall remit the county's share of the taxes collected pursuant to this article on or before the twentieth day of the month next succeeding the month in which the collections were made, for division among the municipalities and taxing districts of the county. He shall accompany his remittance with a report to the county receiving the funds prepared by the commissioner showing from whom the tax was collected. Upon receipt of the funds, the board of supervisors of the county shall allocate the funds to the municipalities and to the various maintenance and bond and interest funds of the county and school districts, as provided in this subsection.

(6) Except as provided in subsection (8) of this section, when there are any oil producing properties within the corporate limits of any municipality, then the municipality shall participate in the division of the tax returned to the county in which the municipality is located, in the proportion which the tax on production of oil from any properties located within the municipal corporate limits bears to the tax on the total production of oil in the county. In no event, however, shall the amount allocated to municipalities exceed one-third (⅓) of the tax produced in the municipality and returned to the county. Any amount received by any municipality as a result of the allocation provided in this subsection shall be used only for such purposes as are authorized by law.

(7) Except as provided in subsection (8) of this section, the balance remaining of any amount of tax returned to the county after the allocation to municipalities shall be divided among the various maintenance and bond interest funds of the county and school districts, in the discretion of the board of supervisors, and the board shall make the division in consideration of the needs of the various taxing districts. The funds so allocated shall be used only for purposes as are authorized by law.

(8) Any amount above and exceeding Six Hundred Thousand Dollars ($600,000.00) that is remitted to the county that is more than twenty percent

(20%) of the taxes above and exceeding Six Hundred Thousand Dollars ($600,000.00) collected on oil produced in the county, shall be utilized by the county for infrastructure repairs.

SOURCES: Codes, 1942, § 9417-03; Laws, 1944, ch. 134, § 3a; Laws, 1950, ch. 510; Laws, 1982, ch. 495, § 5; Laws, 1984, ch. 478, § 17; Laws, 1985, ch. 419, § 2; Laws, 1988, ch. 374; Laws, 1988 Ex Sess, ch. 14, § 17; Laws, 1991, ch. 585, § 1; Laws, 1992, ch. 562, § 1; Laws, 2002, ch. 450, § 2; Laws, 2013, ch. 533, § 3; Laws, 2014, ch. 518, § 4, eff from and after July 1, 2014.

Editor's Note — Laws of 1984, ch. 478, § 3, ch. 478, effective from and after July 1, 1984, provides:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, provides:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Laws of 1985, ch. 419, § 5, provided:

"SECTION 5. The amendment of Section 27-25-505, would become effective from and after the time Chapter 546, 1985 Regular Session of Mississippi Legislature was ratified by the electorate. The electorate ratified the insertion of Section 206A (as proposed by Chapter 546, Laws, 1985) to the Mississippi Constitution of 1890, on November 4, 1986, and, by proclamation of the Secretary of State on November 20, 1986, Section 206A was inserted into the Mississippi Constitution."

Laws of 2004, ch. 482, § 6 provides:

"SECTION 6. From and after July 1, 2004, the board of supervisors of a county shall reduce the ad valorem taxes levied by the county in an amount equal to one-half (½) of the county's share of the revenue derived from the oil and gas severance tax under Sections 27-25-505 and 27-25-705 as a result of offshore drilling on the Mississippi Gulf Coast. From and after July 1, 2004, the governing authorities of a municipality shall reduce the ad valorem taxes levied by the municipality in an amount equal to one-half (½) of the municipality's share of the revenue derived from the oil and gas severance tax under Sections 27-25-505 and 27-25-705 as a result of off shoredrilling on the Mississippi Gulf Coast."

Cross References — County's use of part of oil severance tax funds for building and permanent improvements, see § 19-7-37.

Tax commission as meaning Department of Revenue, see § 27-25-501.

Special fund created for deposit of state's share of oil and gas severance taxes collected, see § 27-25-506.

Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

JUDICIAL DECISIONS

1. In general.

Under Laws of 1944, ch. 134, § 3, municipality in which oil production exceeded one-third total production in county for period between April 1944 and December 1946, both inclusive, is entitled only to one-third of oil severance taxes "returned to county" in which municipality is located, since production exceeded maximum allowance of one-third division as authorized by unambiguous language of statute. Jasper County v. Town of Heidelberg, 204 Miss. 780, 38 So. 2d 97 (1948).

Provision of Laws 1948, ch. 447, § 3 [Code 1942, § 9417.5-03], dealing with distribution of tax upon gas production, to the effect that the amount allocated to the municipality shall not exceed one-third of the tax produced "in the municipality" and returned to the county cannot be relied upon as a legislative interpretation of this statute [Code 1942, § 9417-03], which by unambiguous terms, limits the division to the tax "returned to the county." Jasper County v. Town of Heidelberg, 204 Miss. 780, 38 So. 2d 97 (1948).

§ 27-25-506. Special fund for deposit of state's share of oil and gas severance taxes collected; deposits into Budget Contingency Fund.

There is created a special fund in the State Treasury into which the state's share of proceeds collected under Sections 27-25-505 and 27-25-705 shall be deposited.

The state's share of all oil and gas severance taxes derived from oil and gas resources under state-owned lands or from severed state-owned minerals shall be deposited into the State Treasury to the credit of the trust fund created in Section 206A, Mississippi Constitution of 1890. The following amounts of the remainder of tax collections apportioned to the state shall be deposited to the credit of the trust fund created in Section 206A, Mississippi Constitution of 1890:

(a) For fiscal year 1994, all amounts collected in excess of Thirty-five Million Dollars ($35,000,000.00);

(b) For fiscal year 1995, all amounts collected in excess of Thirty-two Million Five Hundred Thousand Dollars ($32,500,000.00);

(c) For fiscal year 1996, all amounts collected in excess of Thirty Million Dollars ($30,000,000.00);

(d) For fiscal year 1997, all amounts collected in excess of Twenty-seven Million Five Hundred Thousand Dollars ($27,500,000.00);

(e) For fiscal year 1998, all amounts collected in excess of Twenty-five Million Dollars ($25,000,000.00);

(f) For fiscal year 1999, all amounts collected in excess of Twenty Million Dollars ($20,000,000.00);

(g) For fiscal year 2000, all amounts collected in excess of Fifteen Million Dollars ($15,000,000.00);

(h) For fiscal year 2001 through December 31, 2000, all amounts collected and transferred in excess of Ten Million Dollars ($10,000,000.00); and

(i) For fiscal year 2005, all amounts collected in excess of Ten Million Dollars ($10,000,000.00).

(j) [Deleted]

(k) [Deleted]

The monies collected under paragraphs (a) through (i) of this section that are not deposited into the trust fund shall be deposited into the State General Fund. For fiscal year 2005, the monies not deposited into the State General Fund shall be deposited into the Budget Contingency Fund created in Section 27-103-301. For fiscal year 2006 and each fiscal year thereafter, all amounts collected from the remainder of tax collections apportioned to the state shall be deposited into the State General Fund.

SOURCES: Laws, 1992, ch. 562, § 3; Laws, 2001, ch. 521, § 1; Laws, 2004, ch. 595, § 11; Laws, 2005, 2nd Ex Sess, ch. 2, § 6, eff from and after passage (approved May 27, 2005.)

Editor's Note — Laws of 2001, ch. 521, was Senate Bill No. 2680, 2001 Regular Session, and originally passed both Houses of the Legislature on March 24, 2001. The Governor vetoed Senate Bill 2680 on March 30, 2001. The veto was overridden by the State Senate and by the State House of Representatives on March 30, 2001.

Subsection (j) and (k) were repealed by Laws of, 2005, 2nd Ex Sess, ch. 2, § 6, effective from and after passage (approved May 27, 2005).

Cross References — Deposit of state's share of oil severance taxes collected into special fund created by this section, see § 27-25-505.

Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

Deposit of state's share of gas severance taxes collected into special fund created by this section, see § 27-25-705.

Budget Contingency Fund, see § 27-103-301.

§ 27-25-507. Escaped oil; additional collection pending claims of ownership.

When any regular monthly report required from taxpayers by this article, does not disclose the actual source of any oil taxable under this article, but does show such oil to have escaped from a well or wells and to have been recovered from streams, lakes, ravines, or other natural depressions, it shall be the duty of the commissioner to collect, in addition to the privilege tax herein imposed, an additional amount equal to fourteen percent (14%) of the gross value of such escaped oil. The commissioner shall hold such additional collection in a special escrow account for a period of twelve (12) months from the date of the collection, during which time any person or persons who claim to be the rightful owner or owners of any royalty interest in the escaped oil, shall present proper and satisfactory proof of such ownership to the commissioner. If the commissioner shall be satisfied as to the ownership of such escaped oil, then he shall pay to such claimant or claimants a proportionate part of such additional collection held in escrow, according to their proper interest or interests. No payment to any claimant shall be made, however, before it is approved by the attorney general, or before it is ordered by any court having proper jurisdiction. After the lapse of twelve (12) months from the date of any additional collection, if no claim or claims have been made to it, or to the balance remaining of it after the payment by the commissioner of any claim or claims, the commissioner shall distribute the additional collection or any balance of it in the same manner as is herein provided for the distribution of the tax imposed by this article.

SOURCES: Codes, 1942, § 9417-04; Laws, 1944, ch. 134, § 3b; Laws, 1950, ch. 510.

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

§ 27-25-509. Payment of tax; persons liable; lien.

(1) The tax hereby imposed is levied upon the producers of such oil in the proportion of their ownership at the time of severance, but, except as otherwise herein provided, shall be paid by the person in charge of the production operations, who is hereby authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance the proportionate amount of the tax herein levied before making payments to such producer. Said tax shall become due and payable as provided by this article, and such tax shall constitute a first lien upon any of the oil so produced, when in the hands of the original producer, or any purchaser of such oil in its unmanufactured state or condition. In the event the person in charge of production operations fails to pay the tax, then the commissioner shall proceed against the producer to collect the tax in accordance with the provisions made for the collection of delinquent taxes by the Mississippi Sales Tax Law.

(2) When any person in charge of the production operations shall sell the oil produced by him to any person under contracts requiring such purchaser to pay all owners of such oil direct, then the person in charge of the production operations may not be required to deduct the tax herein levied, but in which event such deduction shall be made by the purchaser before making payments to each owner of such oil, and the purchaser in that case shall account for the tax; provided that nothing herein shall be construed as releasing the person in charge of production operations from liability for the payment of said tax.

(3) When any person in charge of production operations shall sell oil produced by him on the open market, he shall withhold the tax imposed by this article, and if he is required to pay other interest holders, is hereby authorized, empowered and required to deduct from any amount due them, the amount of tax levied and due under the provisions of this article before making payment to them.

(4) Every person in charge of production operations by which oil is severed from the soil or water in this state, who fails to deduct and withhold, as required herein, the amount of tax from sale or purchase price, when such oil is sold or purchased under contract, or agreement, or on the open market, or otherwise, shall be liable to the state for the full amount of taxes, interest, and penalties which should have been deducted, withheld and remitted to the state, and the commissioner shall proceed to collect the tax from the person in charge of production operations, under the provisions of this article, as if he were the producer of the oil.

SOURCES: Codes, 1942, § 9417-05; Laws, 1944, ch. 134, § 4, eff from and after March 1, 1944.

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

Action to recover tax, penalty and interest, see § 27-35-5.

Sales tax law, see § 27-65-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Royalty owner.

1. In general.

In an action by a lessee of government oil lands to recover oil severance taxes paid by the lessee on oil belonging to the United States under the terms of a lease whereby the United States was to have one-eighth of all the oil produced, the oil severance tax statute which provided that person in charge of production shall pay the tax and deduct from any amount due other producers a proportion of the amount of tax levied, the tax eventually to be paid by the owners, could not be applied to oil belonging to the United States and an imposition of the taxes violated doctrine of implied constitutional immunity. California Co. v. State, 221 Miss. 766, 74 So. 2d 856 (1954).

2. Royalty owner.

Although oil companies, as the persons in charge of production operations, (1) deducted a school district's proportionate share of oil and gas severance taxes from any payment owed to the school district on its royalty interests derived from oil and gas production on sixteenth-section land and (2) remitted those taxes to the Department of Revenue on the school district's behalf, the oil and gas severance taxes were levied upon the school district as a royalty owner because the taxes were levied in the first instance on the owners of the oil and gas in proportion to their interest and the Department of Revenue was to proceed against the school district, not the oil companies, to collect delinquent taxes. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 520.

CJS. 53 C.J.S., Licenses §§ 134, 135, 137; 58 C.J.S., Mines and Minerals §§ 445-449.

§ 27-25-511. Title in dispute.

When the title to any oil being severed from the soil, or water, is in dispute, or whenever the producer of such oil from the soil, or water, or purchaser thereof, shall be withholding payments on account of litigation, or for any other reason, such producer or purchaser is hereby authorized, empowered, and required to deduct from the gross amount thus held the amount of the tax herein levied and imposed, and to make remittance thereof to the commissioner as provided by this article.

SOURCES: Codes, 1942, § 9417-06; Laws, 1944, ch. 134, § 5, eff from and after March 1, 1944.

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

§ 27-25-513. Returns; oath.

Every producer or person in charge of production operations by which oil is severed from the soil, or water, in this state, when making the reports required by this article, shall file with the commissioner a statement, under oath, on forms prescribed by him, of the business conducted by such producer or person in charge of production operations, during the period for which the report is made, showing gross quantity of oil and the value thereof, so severed or produced, and such other reasonable and necessary information pertaining thereto as the commissioner may require for the proper enforcement of the provisions of this article.

SOURCES: Codes 1942, § 9417-07; Laws, 1944, ch. 134, § 6, eff from and after March 1, 1944.

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

§ 27-25-515. Carriers; records.

When requested by the commissioner, all transporters (railroads, motor vehicles, pipe lines, or other carriers) of oil out of, within, or across the State of Mississippi shall be required to furnish the commissioner such information relative to the transportation of such oil, as he may require.

The commissioner shall have authority to inspect bills of lading, waybills, or other similar documents, and such books and records as may relate to the transportation of oil in the hands of each transporter herein referred to; and the commissioner shall further be empowered to demand the production of such bills of lading, waybills or other similar documents and books and records relating to the transportation of oil, at any point in the State of Mississippi which he may designate.

Provided, however, that in case of common carriers using bills of lading or waybills prescribed or approved by the interstate commerce commission, such common carriers shall only be required to keep the usual records at office or offices in this state where such records are usually kept.

SOURCES: Codes, 1942, § 9417-08; Laws, 1944, ch. 134, § 7, eff from and after March 1, 1944.

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

§ 27-25-517. Additional information.

The commissioner shall have the power to require any producer, or person in charge of production operations, or person purchasing any oil from the soil, or water, to furnish any additional information by him deemed to be necessary for the purpose of computing the amount of said tax; and for said purpose to examine the books, records, and all files of such person; and, to that end, the commissioner shall have the power to examine witnesses, and if any such witness shall fail or refuse to appear at the request of the commissioner, or refuse access to books, records and files, said commissioner shall have the power and authority to proceed as provided by the Mississippi Sales Tax Law.

SOURCES: Codes, 1942, § 9417-09; Laws, 1944, ch. 134, § 8, eff from and after March 1, 1944.

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

Sales tax law, see § 27-65-1 et seq.

§ 27-25-519. Returns; administration.

The taxes levied hereunder shall be due and payable in monthly installments, on or before the twenty-fifth day of the month next succeeding the month in which the tax accrues. The taxpayer shall, on or before the twenty-fifth day of the month, make out a return showing the amount of the tax for which he is liable for the preceding month, and shall mail or send the same, together with a remittance for the amount of the tax due, to the office of the commissioner. Such monthly return shall be signed by the taxpayer or a duly authorized agent of the taxpayer, and shall be verified by oath.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties, and interest for nonpayment of taxes and for noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this article, and the commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this article as are provided in said sales tax law, except where there is conflict, then the provisions of this article shall control. Any damages, penalties, or interest collected by the commissioner for nonpayment of taxes, or for noncompliance with the provisions of this article, shall be paid into the General Fund of the State Treasury by the commissioner.

The tax commission may release production information to the State Oil and Gas Board on all oil produced in this state. Such information may include the name of the producer or operator and the total number of barrels produced for specific wells and time periods, but shall not include the value reported or the tax paid on such production. The State Oil and Gas Board shall provide the tax commission with production information for each well, which information shall include field identification, county or counties where the well is located, well name and American Petroleum Institute number, operator name and well status. The information authorized in this section to be transferred between the tax commission and State Oil and Gas Board shall be provided in formats as agreed upon by those agencies.

SOURCES: Codes, 1942, § 9417-10; Laws, 1944, ch. 134, § 9; Laws, 1996, ch. 382, § 1, eff from and after July 1, 1996.

Cross References — Tax commission as meaning the Department of Revenue, see § 27-25-501.

Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

Sales tax law, see § 27-65-1 et seq.

§ 27-25-521. Records; penalty.

Every person engaged in the business of producing or purchasing any oil in this state, or who is in charge of production operations, and who is required to pay the tax imposed by this article, shall make and keep, for a period of three (3) years, a complete and accurate record, in the form required by the commissioner, showing the gross quantity of oil produced and value of same, the names of the persons from whom purchased, and the time of purchase. It is hereby made the duty of such person to file quarterly with the commissioner a statement, under oath, showing the names and addresses of all persons from whom has been purchased any oil, produced or severed from the soil, or water, in Mississippi during the preceding quarter (three (3) months), and the county from which the oil was severed, together with a total gross quantity and value of oil so purchased, and any other information which the commissioner may require. Said report shall begin with the first calendar quarter after this article becomes effective and shall thereafter be filed within thirty (30) days after the expiration of each quarter and shall be made on such forms as may be prescribed by the commissioner. Any person failing to make the report required by this section shall be guilty of a misdemeanor and be punished by a fine of not less than fifty dollars or more than five hundred dollars for each such offense.

SOURCES: Codes, 1942, § 9417-11; Laws, 1944, ch. 134, § 10, eff from and after March 1, 1944.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-25-523. Ad valorem exemptions.

All oil produced or under the ground on producing properties within the State of Mississippi and all producing oil equipment, including wells, connections, pumps, derricks and other appurtenances actually owned by and belonging to the producer, and all leases in production, including mineral rights in producing properties, shall be exempt from all ad valorem taxes now levied or hereafter levied by the State of Mississippi, or any county, municipality, levee district, road, school or any other taxing district within this state. This exemption shall not apply to drilling equipment, including derricks, machinery, and other materials necessary to drilling, nor to oil gathering systems, nor to the surface of lands leased for oil production or upon which oil producing properties are situated, but all such drilling equipment, gathering systems, and lands shall be assessed as are other properties and shall be subject to ad valorem tax. However, no additional assessment shall be added to the surface value of such lands by reason of the presence of oil thereunder or its production therefrom. The exemption herein granted shall apply to all ad valorem taxes levied in the year 1944 and each year thereafter.

SOURCES: Codes, 1942, § 9417-12; Laws, 1944, ch. 134, § 11, eff from and after March 1, 1944.

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-525.

Exemption of oil, gas and other petroleum products refined in state, see § 27-31-19.

Ad valorem tax exemption of nonproducing gas, oil and mineral interests, see § 27-31-73.

JUDICIAL DECISIONS

1. In general.

Equipment necessary for the transportation of CO2 located at an oil production facility was not exempt from ad valorem taxes as "producing oil equipment"; merely placing equipment necessary for transportation at a producing site does not make it producing equipment since the location of such equipment does not change its classification for taxation purposes. Shell W. E & P, Inc. v. Board of Supvrs., 624 So. 2d 68 (Miss. 1993).

Soft water disposal systems were exempt from ad valorem taxation under the provisions of this section [Code 1942, § 9417-12] as producing oil equipment and appurtenances actually owned by, used and belonging to a producer of oil, gas and other minerals. Gulf Ref. Co. v. Board of Supvrs., 220 Miss. 225, 70 So. 2d 517 (1954).

Code 1942, § 9770, permits and requires separate assessment of undivided fractional interests in oil and gas in place to each separate owner of such fractional undivided interest, insofar as not exempted by this section [Code 1942, § 9417-12]. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

An oil or gas lease with right of entry is an estate in land, subject to ad valorem taxation, but not including the oil or gas as a separate item of valuation. Gulf Ref. Co. v. Stone, 197 Miss. 713, 21 So. 2d 19 (1945).

§ 27-25-525. Constitutionality.

If any clause, sentence, paragraph or part of this article shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, which changes or materially affects the scheme and method of taxation herein provided for, or which in anywise prevents or modifies the exemptions provided for under Section 27-25-523 hereof, then the whole of the article shall be invalid, and every law which this article amends, modifies or repeals shall become operative and in full force and effect.

SOURCES: Codes, 1942, § 9417-14; Laws, 1944, ch. 134, § 14, eff from and after March 1, 1944.

ARTICLE 7.

NATURAL GAS SEVERED OR PRODUCED IN STATE.

SEC.
27-25-701. Definitions.

27-25-703.	Privilege tax levied; exemptions [Paragraph (1)(b) repealed effective July 1, 2018].
27-25-705.	Distribution of tax.
27-25-706.	Distribution of tax; pledge of county's share; issuance of bonds; effect of section.
27-25-707.	Payment of tax; persons liable; lien.
27-25-709.	Title in dispute.
27-25-711.	Returns; oath.
27-25-713.	Transporters; records.
27-25-715.	Additional information.
27-25-717.	Returns; administration.
27-25-719.	Records.
27-25-721.	Ad valorem exemptions.
27-25-723.	Constitutionality.

§ 27-25-701. Definitions.

Whenever used in this article, the following words and terms shall have the definition and meaning ascribed to them in this section, unless the intention to give a more limited meaning is disclosed by the context:

(a) "Tax commission" or "department" means the Department of Revenue of the State of Mississippi.

(b) "Commissioner" means the Commissioner of Revenue of the Department of Revenue.

(c) "Annual" means the calendar year or the taxpayer's fiscal year when permission is obtained from the commissioner to use a fiscal year as a tax period in lieu of a calendar year.

(d) "Value" means the sale price, or market value, at the mouth of the well. If the gas is exchanged for something other than cash, or if there is no sale at the time of severance, or if the relation between the buyer and the seller is such that the consideration paid, if any, is not indicative of the true value or market price, then the commissioner shall determine the value of the gas subject to tax, considering the sale price for cash of gas of like quality in the same or nearest gas-producing field.

(e) "Taxpayer" means any person liable for the tax imposed by this article.

(f) "Gas" means natural and casinghead gas and any gas or vapor taken from below the surface of the soil or water in this state, regardless of whether produced from a gas well or from a well also productive of oil or any other product; provided, however, the term "gas" shall not include carbon dioxide.

(g) "Casinghead gas" means any gas or vapor indigenous to an oil stratum and produced from such stratum with oil.

(h) "Severed" means the extraction or withdrawing by any means whatsoever, from below the surface of the soil or water, of any gas.

(i) "Person" means any natural person, firm, copartnership, joint venture, association, corporation, estate, trust, or any other group, or combination acting as a unit, and the plural as well as the singular number.

(j) "Producer" means any person owning, controlling, managing or leasing any oil or gas property, or oil or gas well, and any person who produces in any manner any gas by taking it from the earth or water in this state, and shall include any person owning any royalty or other interest in any gas or its value, whether produced by him, or by some other person on his behalf, either by lease contract or otherwise.

(k) "Engaging in business" means any act or acts engaged in (personal or corporate) by producers, or parties at interest, the result of which gas is severed from the soil or water, for storage, transport or manufacture, or by which there is an exchange of money, or goods, or thing of value, for gas which has been or is in process of being severed from the soil or water.

(*l*) "Production" means the total gross amount of gas produced, including all royalty or other interest; that is, the amount for the purpose of the tax imposed by this article shall be measured or determined by meter readings showing one hundred percent (100%) of the full volume expressed in cubic feet at a standard base and flowing temperature of sixty (60) degrees Fahrenheit and at the absolute pressure at which the gas is sold and purchased; correction to be made for pressure according to Boyle's law, and for specific gravity according to the gravity at which the gas is sold and purchased or if not so specified, according to test made by the balance method.

(m) "Gathering system" means the pipelines, compressors, pumps, regulators, separators, dehydrators, meters, metering installations and all other property used in gathering gas from the well from which it is produced if such properties are owned by other than the operator, and all such properties, if owned by the operator, beyond the first metering installation that is nearest the well.

(n) "Discovery well" means any well producing gas from a single pool in which a well has not been previously produced in paying quantities after testing.

(o) "Development wells" means all gas-producing wells other than discovery wells and replacement wells.

(p) "Replacement well" means a well drilled on a drilling and/or production unit to replace another well which is drilled in the same unit and completed in the same pool.

(q) "Three-dimensional seismic" means data which is regularly organized in three (3) orthogonal directions and thus suitable for interpretation with a three-dimensional software package on an interactive work station.

(r) "Two-year inactive well" means any oil or gas well certified by the State Oil and Gas Board as having not produced oil or gas in more than a total of thirty (30) days during a twelve-consecutive-month period in the two (2) years before the date of certification.

(s) "Horizontally drilled well" means a well in which the deviation of the borehole is at least eighty degrees (80°) from vertical so that the borehole penetrates a productive formation in a manner parallel to the formation and in which there is at least one thousand (1,000) feet of lateral penetration through productive reservoirs.

(t) "Horizontally drilled recompletion well" means an existing well in which the deviation of the borehole is at least eighty degrees (80°) from vertical so that the borehole penetrates a productive formation in a manner parallel to the formation and in which there is at least one thousand (1,000) feet of lateral penetration through productive reservoirs.

SOURCES: Codes, 1942, § 9417.5-01; Laws, 1948, ch. 447, § 1; Laws, 1994, ch. 545, § 3; Laws, 1995, ch. 531, § 3; Laws, 1999, ch. 460, § 1; Laws, 2004, ch. 496, § 1; Laws, 2009, ch. 492, § 64; Laws, 2013, ch. 533, § 4, eff from and after July 1, 2013.

Editor's Note — Laws of 1994, ch. 545, § 8, eff from and after April 1, 1994, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the oil and gas severance tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the oil and gas severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1995, ch. 531, § 5, provides as follows:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the oil and gas severance tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the oil and gas severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue, see § 27-3-1 et seq.

Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue of the Department of Revenue, see § 27-3-4.

Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-723.

Tax imposed for administration expenses of state oil and gas board, see § 53-1-73.

JUDICIAL DECISIONS

1. In general.
2. Person.

1. In general.

Oil and gas severance taxes levied under Miss. Code Ann. §§ 27-25-501 to 27-25-525 and 27-25-701 to 27-25-723 did not apply to a school district because the school district did not meet the definition of "person" set forth in Miss. Code Ann. §§ 27-25-501(h) and 27-25-701(i), and there was nothing in the statutes indicating that the school district was subject to oil and gas severance taxes by necessary implication. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

Operator of a gas processing plant which included plant fuel in its gas processing fee deduction was not entitled also to take the plant fuel deduction allowed by the Mississippi State Tax Commission in determining the value of gas for severance tax purposes under Miss. Code Ann. §§ 27-25-701(d), 27-25-703(1). In re Pursue Energy Corp., 379 B.R. 100 (Bankr. S.D. Miss. 2006), affirmed by 2007 U.S. Dist. LEXIS 72976 (S.D. Miss. Sept. 28, 2007).

Where poisonous or "sour" raw gas required processing and had no market value at the mouth of the well, the value of the gas for purposes of the severance tax under Miss. Code Ann. §§ 27-25-701(d), 27-25-703(1) was the sales price of the processed gas less gas processing fee deductions for actual capital investment, return on investment, and plant operation in addition to direct operating costs of gathering, delivering, and transporting the gas. In re Pursue Energy Corp., 379 B.R. 100 (Bankr. S.D. Miss. 2006), affirmed by 2007 U.S. Dist. LEXIS 72976 (S.D. Miss. Sept. 28, 2007).

2. Person.

Miss. Code Ann. §§ 27-25-501(h) and 27-25-701(i) show that a different meaning of "person" than that contained in Miss. Code Ann. § 1-3-39 was intended for the purposes of oil and gas severance taxation. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

§ 27-25-703. Privilege tax levied; exemptions [Paragraph (1)(b) repealed effective July 1, 2018].

(1)(a) Except as otherwise provided in this section, there is hereby levied, to be collected as provided in this article, annual privilege taxes upon every person engaging or continuing within this state in the business of producing, or severing gas from below the soil or water for sale, transport, storage, profit or for commercial use. The amount of the tax shall be measured by the value of the gas produced and shall be levied and assessed at a rate of six percent (6%) of the value of the gas at the point of production, except as otherwise provided in subsection (4) of this section.

(b)(i) The tax shall be levied and assessed at the rate of one and three-tenths percent (1.3%) of the value of the gas at the point of production on gas produced from a horizontally drilled well or from any horizontally drilled recompletion well from which production commences from and after July 1, 2013, for a period of thirty (30) months beginning on the date of first sale of production or until payout of the well cost is achieved, whichever first occurs. Thereafter, the tax shall be levied and assessed as provided for in paragraph (a) of this subsection.

(ii) Payout of a horizontally drilled well or horizontally drilled recompletion well shall be deemed to have occurred the first day of the next month after gross revenues, less royalties and severance taxes, equal to the cost to drill and complete the well.

(iii) Each operator must apply by letter to the State Oil and Gas Board for the reduced rate provided in this paragraph (b), and shall provide the board with the status of payout on a semiannual basis of any horizontally drilled well or horizontally drilled recompletion well by signed affidavit executed by a company representative.

(iv) This paragraph (b) shall be repealed from and after July 1, 2018; however, any horizontally drilled well or horizontally drilled recompletion well from which production commences before July 1, 2018, shall be taxed as provided for in this paragraph (b) notwithstanding that the repeal of this paragraph (b) has become effective.

(2) The tax is levied upon the entire production in this state, regardless of the place of sale or to whom sold or by whom used, or the fact that the delivery may be made to points outside the state, but not levied upon that gas, lawfully injected into the earth for cycling, repressuring, lifting or enhancing the recovery of oil, nor upon gas lawfully vented or flared in connection with the production of oil, nor upon gas condensed into liquids on which the oil severance tax of six percent (6%) is paid; however, if any gas so injected into the earth is sold for such purposes, then the gas so sold shall not be excluded in computing the tax. The tax shall accrue at the time the gas is produced or severed from the soil or water, and in its natural, unrefined or unmanufactured state.

(3) Natural gas and condensate produced from any wells for which drilling is commenced after March 15, 1987, and before July 1, 1990, shall be exempt from the tax levied under this section for a period of two (2) years beginning on the date of first sale of production from such wells.

(4)(a) Any well which begins commercial production of occluded natural gas from coal seams on or after March 20, 1990, and before July 1, 1993, shall be taxed at the rate of three and one-half percent (3-½%) of the gross value of the occluded natural gas from coal seams at the point of production for a period of five (5) years after such well begins production.

(b) Any well which begins commercial production of occluded natural gas from coal seams on or after July 1, 2004, and before July 1, 2007, shall be taxed at the rate of three percent (3%) of the gross value of the occluded natural gas from coal seams at the point of production for a period of five (5) years beginning on the date of the first sale of production from such well.

(5)(a) Natural gas produced from discovery wells for which drilling or re-entry commenced on or after April 1, 1994, but before July 1, 1999, shall be exempt from the tax levied under this section for a period of five (5) years beginning on the earlier of one (1) year from completion of the well or the date of first sale from such well, provided that the average monthly sales price of such gas does not exceed Three Dollars and Fifty Cents ($3.50) per one thousand (1,000) cubic feet. The exemption for natural gas produced from discovery wells as described in this paragraph (a) shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be exempt for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective. Natural gas produced from development wells or replacement wells drilled in connection with discovery wells for which drilling commenced on or after January 1, 1994, shall be assessed at a rate of three percent (3%) of the value thereof at the point of production for a period of three (3) years. The reduced rate of assessment of natural gas produced from development wells or replacement wells as described in this paragraph (a) shall be repealed from and after January 1, 2003, provided that any such production for which drilling commenced before January 1, 2003, shall be assessed at the reduced rate for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(b) Natural gas produced from discovery wells for which drilling or re-entry commenced on or after July 1, 1999, shall be assessed at a rate of three percent (3%) of the value thereof at the point of production for a period of five (5) years beginning on the earlier of one (1) year from completion of the well or the date of first sale from such well, provided that the average monthly sales price of such gas does not exceed Two Dollars and Fifty Cents ($2.50) per one thousand (1,000) cubic feet. The reduced rate of assessment of natural gas produced from discovery wells as described in this paragraph (b) shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be assessed at the reduced rate for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective. Natural gas produced from development wells or replacement wells drilled in connection with discovery wells for which drilling commenced on or after July 1, 1999, shall be assessed at a rate of three percent (3%) of the value thereof at the point of production for a period of three (3) years. The reduced rate of assessment of natural gas produced from development wells or replacement wells as described in this paragraph (b) shall be repealed from and after January 1, 2003, provided that any such production for which drilling commenced before January 1, 2003, shall be assessed at the reduced rate for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(6)(a) Gas produced from a development well for which drilling commenced on or after April 1, 1994, but before July 1, 1999, and for which three-dimensional seismic was utilized in connection with the drilling of such well, shall be assessed at a rate of three percent (3%) of the value of the gas at the point of production for a period of five (5) years, provided that the average monthly sales price of such gas does not exceed Three Dollars and Fifty Cents ($3.50) per one thousand (1,000) cubic feet. The reduced rate of assessment of gas produced from a development well as described in this subsection and for which three-dimensional seismic was utilized shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be assessed at the reduced rate for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective.

(b) Gas produced from a development well for which drilling commenced on or after July 1, 1999, and for which three-dimensional seismic was utilized in connection with the drilling of such well, shall be assessed at a rate of three percent (3%) of the value of the gas at the point of production for a period of five (5) years, provided that the average monthly sales price of such gas does not exceed Two Dollars and Fifty Cents ($2.50) per one thousand (1,000) cubic feet. The reduced rate of assessment of gas produced from a development well as described in this paragraph (b) and for which three-dimensional seismic was utilized shall be repealed from and after July 1, 2003, provided that any such production for which a permit was granted by the board before July 1, 2003, shall be assessed at the reduced rate for an entire period of five (5) years, notwithstanding that the repeal of this provision has become effective.

(7)(a) Natural gas produced before July 1, 1999, from a two-year inactive well as defined in Section 27-25-701 shall be exempt from the taxes levied under this section for a period of three (3) years beginning on the date of first sale of production from such well, provided that the average monthly sales price of such gas does not exceed Three Dollars and Fifty Cents ($3.50) per one thousand (1,000) cubic feet. The exemption for natural gas produced from an inactive well as described in this subsection shall be repealed from and after July 1, 2003, provided that any such production which began before July 1, 2003, shall be exempt for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(b) Natural gas produced on or after July 1, 1999, from a two-year inactive well as defined in Section 27-25-701 shall be exempt from the taxes levied under this section for a period of three (3) years beginning on the date of first sale of production from such well, provided that the average monthly sales price of such gas does not exceed Two Dollars and Fifty Cents ($2.50) per one thousand (1,000) cubic feet. The exemption for natural gas produced from an inactive well as described in this paragraph (b) shall be repealed from and after July 1, 2003, provided that any such production which began before July 1, 2003, shall be exempt for an entire period of three (3) years, notwithstanding that the repeal of this provision has become effective.

(8) The State Oil and Gas Board shall have the exclusive authority to determine the qualification of wells defined in paragraphs (n) through (t) of Section 27-25-701.

SOURCES: Codes, 1942, § 9417.5-02; Laws, 1948, ch. 447, § 2; Laws, 1984, ch. 451, § 2; Laws, 1987, ch. 428, § 2; Laws, 1988, ch. 485, § 2; Laws, 1989, ch. 520, § 2; Laws, 1990, ch. 439, § 1; Laws, 1994, ch. 545, § 4; Laws, 1995, ch. 531, § 4; Laws, 1999, ch. 460, § 2; Laws, 1999, ch. 523, § 2; Laws, 2004, ch. 496, § 2; Laws, 2013, ch. 533, § 5, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 2 of ch. 460, Laws of 1999, effective from and after its passage (approved March 29, 1999), amended this section. Section 2 of ch. 523, Laws of 1999, effective from and after its passage (approved April 15, 1999), also amended this section. As set out above, this section reflects the language of Section 2 of ch. 523, Laws of 1999, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Editor's Note — Laws of 1987, ch. 428, § 3, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the gas or oil severance tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the gas or oil severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1994, ch. 545, § 8, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the oil and gas severance tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the oil and gas severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1995, ch. 531, § 5, provides as follows:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the oil and gas severance tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the oil and gas severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Tax on severed oil, see § 27-25-501.

Definition of "three-dimensional seismic," see § 27-25-701.

Tax collections made pursuant to paragraph (1)(b) of this section to be apportioned to the county in which the oil was produced, see § 27-25-705.

Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-723.

Refund of taxes generally, see § 27-73-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Reinjected gas.
3. Gas contract settlements.

1. In general.

Operators of gas processing plants which include plant fuel in the gas processing fee deduction are not entitled also to take the plant fuel deduction allowed by the Mississippi State Tax Commission in determining the value of gas for severance tax purposes under Miss. Code Ann. §§ 27-25-701(d), 27-25-703(1). In re Pursue Energy Corp., 379 B.R. 100 (Bankr. S.D. Miss. 2006), affirmed by 2007 U.S. Dist. LEXIS 72976 (S.D. Miss. Sept. 28, 2007).

Where poisonous or "sour" raw gas requires processing and has no market value at the mouth of the well, the value of the gas for purposes of the severance tax under Miss. Code Ann. §§ 27-25-701(d), 27-25-703(1) is the sales price of the processed gas less gas processing fee deductions for actual capital investment, return on investment, and plant operation, in addition to direct operating costs of gathering, delivering, and transporting the gas. In re Pursue Energy Corp., 379 B.R. 100 (Bankr. S.D. Miss. 2006), affirmed by 2007 U.S. Dist. LEXIS 72976 (S.D. Miss. Sept. 28, 2007).

In order for gas to be exempt under the statute, it need not be sold during the exemption period. OXY USA, Inc. v. Mississippi State Tax Comm'n, 757 So. 2d 271 (Miss. 2000).

2. Reinjected gas.

Natural gas that was exempt under the statute when first produced remained exempt when it was reinjected as part of a secondary oil recovery project and then retrieved after the exemption period as it was produced during the exemption period and was, therefore, exempt from ever being subject to a severance tax. OXY USA, Inc. v. Mississippi State Tax Comm'n, 757 So. 2d 271 (Miss. 2000).

3. Gas contract settlements.

Where an operator of a gas processing plant amended a prior agreement by entering into a buy down agreement with a processed gas purchaser whereby the purchaser paid a sum to the operator and the purchaser paid for gas at a reduced rate for a specified period, the buy down amount was subject to severance tax under Miss. Code Ann. § 27-25-703(1), but only to the extent of the operator's actual production of gas, multiplied by the difference between the original price and the buy down price, for the period of actual production after the buy down agreement. In re Pursue Energy Corp., 379 B.R. 100 (Bankr. S.D. Miss. 2006), affirmed by 2007 U.S. Dist. LEXIS 72976 (S.D. Miss. Sept. 28, 2007).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 520.

CJS. 53 C.J.S., Licenses §§ 102, 106.

58 C.J.S., Mines and Minerals §§ 445-449.

§ 27-25-705. Distribution of tax.

[With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

(1) All taxes levied in this article and collected by the department shall be paid into the State Treasury on the same day in which the taxes are collected.

(2) Except as otherwise provided in this section, the commissioner shall apportion all the tax collections made pursuant to this article to the state and to the county in which the gas was produced, in the proportion of

sixty-six and two-thirds percent (66-⅔%) to the state and thirty-three and one-third percent (33-⅓%) to the county.

(3) The commissioner shall apportion all the tax collections made pursuant to Section 27-25-703(1)(b) to the county in which the gas is produced.

(4) When the producer of gas subject to the tax levied in this article increases the price of the gas sold and such increase is subject to approval by a federal regulatory board or commission, and when the producer of the gas so requests, the State Treasurer is hereby authorized to hold the severance tax collected on the price increase in escrow until such time as the price increase or a portion thereof is finally granted or approved. The severance tax thus held in escrow shall be deposited by the State Treasurer to an account in a state depository to be invested in an interest-bearing account in the manner provided by law. When the price increase in question or a portion thereof is granted or approved, the commissioner shall compute the correct severance tax due on the increase and certify the amount of tax thus computed. This amount and interest earned from the depository shall be distributed to the General Fund and to the county or counties proportionately as provided in this subsection. The balance, if any, of the tax and interest held in escrow on the price increase shall be returned to the taxpayer.

(5) The state's share of all gas severance taxes collected pursuant to this section shall be deposited as provided for in Section 27-25-506.

(6) The commissioner shall certify at the end of each month the apportionment to each county to the State Treasurer, who shall remit the county's share of the funds on or before the twentieth day of the month next succeeding the month in which the collections were made for division among the municipalities and taxing districts of the county. The commissioner shall submit a report to the State Treasurer for distribution to each county receiving the funds showing from whom the tax and interest, if any, were collected. Upon receipt of the funds, the board of supervisors of the county shall allocate the funds to the municipalities and to the various maintenance and bond and interest funds of the county, school districts, supervisors districts and road districts, as provided in this subsection.

When there are any gas producing properties within the corporate limits of any municipality, then the municipality shall participate in the division of the tax and interest, if any, returned to the county in which the municipality is located in the proportion which the tax on production of gas from properties located within the municipal corporate limits bears to the tax on total production of gas in the county. In no event, however, shall the amount allocated to the municipalities exceed one-third (⅓) of the tax and interest produced in the municipality and returned to the county. Any amount received by any municipality as a result of the allocation provided for in this subsection shall be used for such purposes as are authorized by law.

The balance remaining of any funds returned to the county after the allocation to municipalities shall be divided among the various maintenance and bond and interest funds of the county, school districts, supervisors districts and road districts, in the discretion of the board of supervisors, and the board shall make the division in consideration of the needs of the various taxing districts. The funds so allocated shall be used only for such purposes as are authorized by law.

[With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

(1) All taxes herein levied in this article and collected by the department shall be paid into the State Treasury on the same day in which the taxes are collected.

(2) Except as otherwise provided in this section, the commissioner shall apportion all the tax collections made pursuant to this article to the state and to the county in which the gas was produced, in the proportion of sixty-six and two-thirds percent (66-⅔%) to the state and thirty-three and one-third percent (33-⅓%) to the county.

(3) The commissioner shall apportion all the tax collections made pursuant to Section 27-25-703(1)(b) to the county in which the gas is produced.

(4) When the producer of gas subject to the tax levied in this article increases the price of the gas sold and the increase is subject to approval by a federal regulatory board or commission, and when the producer of the gas so requests, the State Treasurer is hereby authorized to hold the severance tax collected on the price increase in escrow until such time as the price increase or a portion thereof is finally granted or approved. The severance tax thus held in escrow shall be deposited by the State Treasurer to an account in a state depository to be invested in an interest-bearing account in the manner provided by law. When the price increase in question or a portion thereof is granted or approved, the commissioner shall compute the correct severance tax due on the increase and certify the amount of tax thus computed. This amount and interest earned from the depository shall be distributed to the General Fund and to the county or counties proportionately as provided in this subsection. The balance, if any, of the tax and interest held in escrow on the price increase shall be returned to the taxpayer.

(5) The state's share of all gas severance taxes collected pursuant to this section shall be deposited as provided for in Section 27-25-506.

(6) The commissioner shall certify at the end of each month the apportionment to each county to the State Treasurer, who shall remit the county's share of the funds on or before the twentieth day of the month next succeeding the month in which the collections were made for division among the municipalities and taxing districts of the county. The commissioner shall submit a report to the State Treasurer for distribution to each county receiving the funds showing from whom the tax and interest, if any, were collected. Upon receipt of the funds, the board of supervisors of the county

shall allocate the funds to the municipalities and to the various maintenance and bond and interest funds of the county and school districts, as provided in this subsection.

When there are any gas producing properties within the corporate limits of any municipality, then the municipality shall participate in the division of the tax and interest, if any, returned to the county in which the municipality is located in the proportion which the tax on production of gas from properties located within the municipal corporate limits bears to the tax on total production of gas in the county. In no event, however, shall the amount allocated to the municipalities exceed one-third (⅓) of the tax and interest produced in the municipality and returned to the county. Any amount received by any municipality as a result of the allocation provided for in this subsection shall be used for such purposes as are authorized by law.

The balance remaining of any funds returned to the county after the allocation to municipalities shall be divided among the various maintenance and bond and interest funds of the county and school districts, in the discretion of the board of supervisors, and the board shall make the division in consideration of the needs of the various taxing districts. The funds so allocated shall be used only for such purposes as are authorized by law.

SOURCES: Codes, 1942, § 9417.5-03; Laws, 1948, ch. 447, § 3; Laws, 1971, ch. 465, § 1; Laws, 1972, ch. 524, § 1; Laws, 1973, ch. 436, § 1; Laws, 1982, ch. 495, § 6; Laws, 1984, ch. 478, § 18; Laws, 1985, ch. 419, § 3; Laws, 1988 Ex Sess, ch. 14, § 18; Laws, 1991, ch. 585, § 2; Laws, 1992, ch. 562, § 2; Laws, 2002, ch. 450, § 3; Laws, 2013, ch. 533, § 6, eff from and after July 1, 2013.

Editor's Note — Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, provides:

"SECTION 35. The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

Laws of 1985, ch. 419, § 5, provided:

"SECTION 5. The amendment of Section 27-25-505, would become effective from and after the time Chapter 546, 1985 Regular Session of Mississippi Legislature was ratified by the electorate. The electorate ratified the insertion of Section 206A (as proposed by Chapter 546, Laws, 1985) to the Mississippi Constitution of 1890, on November 4, 1986, and, by proclamation of the Secretary of State on November 20, 1986, Section 206A was inserted into the Mississippi Constitution."

Laws of 2004, ch. 482, § 6 provides:

"SECTION 6. From and after July 1, 2004, the board of supervisors of a county shall reduce the ad valorem taxes levied by the county in an amount equal to one-half (½) of the county's share of the revenue derived from the oil and gas severance tax under Sections 27-25-505 and 27-25-705 as a result of offshore drilling on the Mississippi Gulf Coast. From and after July 1, 2004, the governing authorities of a municipality shall reduce the ad valorem taxes levied by the municipality in an amount equal to one-half (½) of the municipality's share of the revenue derived from the oil and gas severance tax under Sections 27-25-505 and 27-25-705 as a result of offshore drilling on the Mississippi Gulf Coast."

Cross References — Special fund created for deposit of state's share of oil and gas severance taxes collected, see § 27-25-506.

"State tax commission" as meaning the Department of Revenue, see § 27-25-701.

Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-723.

JUDICIAL DECISIONS

1. In general.

Provision of this statute [Code 1942, § 9417.5-03] to the effect that the amount to be allocated to the municipality shall not exceed one-third of the tax produced "in the municipality" and returned to the county, cannot be relied upon as a legislative interpretation of similar provision of Laws, 1944, ch. 134, § 3 (Code 1942, § 9417-03), dealing with distribution of tax upon oil production and limiting the allocation of tax to municipality to one-third of the tax "returned to the county," since this statute [Code 1942, § 9417.5-03] is consistent with a purpose to retain distinction in the distribution of tax revenues from oil. Jasper County v. Town of Heidelberg, 204 Miss. 780, 38 So. 2d 97 (1948).

§ 27-25-706. Distribution of tax; pledge of county's share; issuance of bonds; effect of section.

The board of supervisors of any county in the State of Mississippi bordering on the Pearl River and having a population according to the 1970 census of not less than forty thousand (40,000) and not more than fifty thousand (50,000), and through which Interstate Highway 20 runs, and wherein there is being constructed or has been constructed a plant for the extracting of sulphur from natural gas, and the board of supervisors of any county in the State of Mississippi bordering on the Pearl River and having a population according to the 1970 census of not less than nineteen thousand (19,000) and not more than twenty-one thousand (21,000) and wherein U.S. Highway 49 and Mississippi Highway 28 intersect and wherein there is being constructed or has been constructed a plant for the extracting of sulphur from natural gas, are hereby authorized and empowered, in their discretion, to pledge all or any part of the county's share of the severance tax on gas extracted, handled or processed through such extraction plant, as additional security for the payment of bonds issued for the purpose of constructing, reconstructing, overlaying and/or repairing, an access road or roads or publicly owned railroads to and from such sulphur extraction plant. The amount so pledged for the payment of the principal of and the interest on such bonds shall be deducted and set aside by such board of supervisors prior to the distribution of such severance taxes in the manner provided by law, and only the amount of such severance taxes remaining after such deduction shall be subject to such distribution. The board of supervisors in such counties may pledge only up to fifty percent (50%) of such severance taxes as their respective county may receive to retire the bonds and interest pursuant to the authority of this section. The required local contribution of said counties to the cost of the minimum foundation education program shall not be reduced nor shall the obligation of the state under said minimum foundation program to said counties be increased because of the passage of this section.

Such bonds shall be issued under the provisions of Section 19-9-1 through Section 19-9-19.

SOURCES: Laws, 1972, ch. 524, § 1; Laws, 1973, ch. 436, § 2; Laws, 1982, ch. 400, § 1, eff from and after passage (approved March 24, 1982).

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence of the first paragraph. The word "publically" was changed to "publicly". The Joint Committee ratified the correction at its December 3, 1996, meeting, and the section has been reprinted in the supplement to reflect the corrected language.

Editor's Note — Laws of 1973, ch. 436, § 3, eff from and after passage (approved March 30, 1973), provides as follows:

"SECTION 3. Section 2 of this act shall be repealed automatically upon the full payment of the bonds provided for therein issued pursuant thereto."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in the last paragraph was corrected by substituting "Sections 19-9-1 through 19-9-19" for "Section 19-9-1 to 19-9-19, inclusive."

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-723.

§ 27-25-707. Payment of tax; persons liable; lien.

(1) The tax hereby imposed is levied upon the producers of such gas in the proportion of their ownership at the time of severance, but except as otherwise herein provided, shall be paid by the person in charge of the production operations, who is hereby authorized, empowered and required to deduct from any amount due to producers of such production at the time of severance the proportionate amount of the tax herein levied before making payments to such producer. Said tax shall become due and payable as provided by this article, and such tax shall constitute a first lien upon the property from which the gas was produced. In the event the person in charge of production operations fails to pay the tax, then the commissioner shall proceed against the producer to collect the tax in accordance with the provisions made for the collection of delinquent taxes by the Mississippi Sales Tax Law.

(2) When any person in charge of the production operations shall sell the gas produced by him to any person under contracts requiring such purchaser to pay all owners of such gas direct, then the person in charge of the production operations may not be required to deduct the tax herein levied, but in which event such deduction shall be made by the purchaser before making payments to each owner of such gas, and the purchaser in that case shall account for the tax; provided that nothing herein shall be construed as releasing the person in charge of production operations from liability for the payment of said tax.

(3) When any person in charge of production operations shall sell gas produced by him on the open market, he shall withhold the tax imposed by this article, and if he is required to pay other interest holders, is hereby authorized, empowered and required to deduct from any amount due them, the amount of

tax levied and due under the provisions of this article before making payment to them.

(4) Every person in charge of production operations by which gas is severed from the soil or water in this state, who fails to deduct and withhold, as required herein, the amount of tax from sale or purchase price, when such gas is sold or purchased under contract or agreement, or on the open market, or otherwise, shall be liable to the state for the full amount of taxes, interest, and penalties which should have been deducted, withheld and remitted to the state, and the commissioner shall proceed to collect the tax from the person in charge of production operations, under the provisions of this article, as if he were the producer of the gas.

SOURCES: Codes, 1942, § 9417.5-04; Laws, 1948, ch. 447, § 4, eff from and after July 1, 1948.

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-723.

Action to recover tax, penalty and interest, see § 27-35-5.

Sales tax law, see § 27-65-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Royalty owner.

1. In general.

Where a portion of a payment made by a purchaser of processed gas under a buy down agreement was found to be subject to severance tax, the operator of the gas processing plant was liable for the full amount of the tax under Miss. Code Ann. § 27-25-707(2), even though separate payments were made under the agreement to the operator and to the operator's partners. In re Pursue Energy Corp., 379 B.R. 100 (Bankr. S.D. Miss. 2006), affirmed by 2007 U.S. Dist. LEXIS 72976 (S.D. Miss. Sept. 28, 2007).

2. Royalty owner.

Although oil companies, as the persons in charge of production operations, (1) deducted a school district's proportionate share of oil and gas severance taxes from any payment owed to the school district on its royalty interests derived from oil and gas production on sixteenth-section land and (2) remitted those taxes to the Department of Revenue on the school district's behalf, the oil and gas severance taxes were levied upon the school district as a royalty owner because the taxes were levied in the first instance on the owners of the oil and gas in proportion to their interest and the Department of Revenue was to proceed against the school district, not the oil companies, to collect delinquent taxes. Jones County Sch. Dist. v. Miss. Dep't of Revenue, 111 So. 3d 588 (Miss. 2013).

§ 27-25-709. Title in dispute.

When the title to any gas being severed from the soil, or water, is in dispute, or whenever the producer of such gas from the soil, or water, or purchaser thereof, shall be withholding payments on account of litigation, or for any other reason, such producer or purchaser is hereby authorized, empowered, and required to deduct from the gross amount thus held the amount of the tax herein levied and imposed, and to make remittance thereof to the commissioner as provided by this article.

SOURCES: Codes, 1942, § 9417.5-05; Laws, 1948, ch. 447, § 5, eff from and after July 1, 1948.

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-723.

§ 27-25-711. Returns; oath.

Every producer or person in charge of production operations by which gas is severed from the soil, or water, in this state, when making the reports required by this article, shall file with the commissioner a statement, under oath, on forms prescribed by him, of the business conducted by such producer or person in charge of production operations, during the period for which the report is made, showing gross quantity of gas and the value thereof, so severed or produced, and such other reasonable and necessary information pertaining thereto as the commissioner may require for the proper enforcement of the provisions of this article.

SOURCES: Codes, 1942, § 9417.5-06; Laws, 1948, ch. 447, § 6, eff from and after July 1, 1948.

§ 27-25-713. Transporters; records.

When requested by the commissioner, all transporters of gas out of, within, or across the State of Mississippi shall be required to furnish the commissioner such information relative to the transportation of such gas, as he may require.

The commissioner shall have authority to inspect all meter and other charts, documents, books and records as may relate to the transportation of gas in the hands of each transporter herein referred to. The commissioner shall further be empowered to demand the production of such charts, documents, and books and records relating to the transportation of gas at any point in the State of Mississippi which he may designate.

SOURCES: Codes, 1942, § 9417.5-07; Laws, 1948, ch. 447, § 7, eff from and after July 1, 1948.

§ 27-25-715. Additional information.

The commissioner shall have the power to require any producer or person in charge of production operations, or person purchasing any gas from the soil, or water, to furnish any additional information by him deemed to be necessary for the purpose of computing the amount of said tax; and for said purpose to examine the meter and other charts, books, records, and all files of such person; and, to that end, the commissioner shall have the power to examine witnesses, and if any such witness shall fail or refuse to appear at the request of the commissioner, or refuse access to books, records and files, said commissioner shall have the power and authority to proceed as provided by the Mississippi Sales Tax Law.

SOURCES: Codes, 1942, § 9417.5-08; Laws, 1948, ch. 447, § 8, eff from and after July 1, 1948.

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-723.

Sales tax law, see § 27-65-1 et seq.

§ 27-25-717. Returns; administration.

The taxes levied hereunder shall be due and payable in monthly installments on or before the twenty-fifth day of the month next succeeding the month in which the tax accrues. The taxpayer shall, on or before the twenty-fifth day of the month, make out a return showing the amount of the tax for which he is liable for the preceding month and shall mail or send the same, together with a remittance for the amount of the tax due, to the office of the commissioner. Such monthly return shall be signed by the taxpayer or a duly authorized agent of the taxpayer and shall be verified by oath.

All administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties, and interest for nonpayment of taxes and for noncompliance with the provisions of said chapter, and all other requirements and duties imposed upon taxpayers shall apply to all persons liable for taxes under the provisions of this article, and the commissioner shall exercise all the power and authority and perform all the duties with respect to taxpayers under this article as are provided in said Mississippi Sales Tax Law, except where there is conflict, then the provisions of this article shall control. Provided, however, the statute of limitations for examining returns or to recover taxes and interest on funds held in escrow on price increases shall be three (3) years from the time the tax and interest is withdrawn from the State Depository for distribution to the State Treasury and to the county or counties in which the gas was produced.

Any damages, penalties, or interest collected by the commissioner for nonpayment of taxes or for noncompliance with the provisions of this article shall be paid into the General Fund of the State Treasury by the commissioner.

The tax commission may release production information to the State Oil and Gas Board on all gas produced in this state. Such information may include the name of the producer or operator and the total number of million cubic feet produced for specific wells and time periods, but shall not include the value reported or the tax paid on such production. The State Oil and Gas Board shall provide the tax commission with production information for each well, which information shall include field identification, county or counties where the well is located, well name and American Petroleum Institute number, operator name and well status. The information authorized in this section to be transferred between the tax commission and State Oil and Gas Board shall be provided in formats as agreed upon by those agencies.

SOURCES: Codes, 1942, § 9417.5-09; Laws, 1948, ch. 447, § 9; Laws, 1971, ch. 465 § 2; Laws, 1996, ch. 382, § 2, eff from and after July 1, 1996.

Cross References — Tax commission as meaning Department of Revenue, see § 27-25-701.

Sales tax law, see § 27-65-1 et seq.

§ 27-25-719. Records.

Every person engaged in the business of producing or purchasing any gas in this state, or who is in charge of production operations, and who is required to pay the tax imposed by this article, shall make and keep, for a period of three (3) years, a complete and accurate record, in the form required by the commissioner showing the gross quantity of gas produced and value of same, the names of the persons from whom purchased, and the time of purchase.

SOURCES: Codes, 1942, § 9417.5-10; Laws, 1948, ch. 447, § 10, eff from and after July 1, 1948.

§ 27-25-721. Ad valorem exemptions.

All gas and carbon dioxide produced or under the ground on producing properties within the State of Mississippi and all producing gas or carbon dioxide equipment, including wells, connections, pumps, derricks and other appurtenances actually owned by and belonging to the producer, and all leases in production, including mineral rights in producing properties, shall be exempt from all ad valorem taxes now levied or hereafter levied by the State of Mississippi, or any other taxing district within this state. This exemption shall not apply to drilling equipment, including derricks, machinery, and other materials necessary to drilling, nor to gas or carbon dioxide gathering systems, nor to the surface of lands leased for gas or carbon dioxide production or upon which gas or carbon dioxide producing properties are situated, but all such drilling equipment, gathering systems, and lands shall be assessed as are other properties and shall be subject to ad valorem tax. However, no additional assessment shall be added to the surface value of such lands by reason of the presence of gas or carbon dioxide thereunder or its production therefrom. The exemption herein granted shall apply to all ad valorem taxes levied in the year 1948 and each year thereafter.

SOURCES: Codes, 1942, § 9417.5-11; Laws, 1948, ch. 447, § 11; Laws, 2000, ch. 504, § 1; Laws, 2004, ch. 496, § 3, eff from and after passage (approved May 4, 2004.)

Cross References — Effect on the whole of this article of adjudication of invalidity of any part of this article, see § 27-25-723.

Exemption of oil, gas and other petroleum products refined in state, see § 27-31-19.

Ad valorem tax exemption of non-producing gas, oil and mineral interests, see § 27-31-73.

Exemption of equipment used to facilitate transportation of carbon dioxide in connection with enhanced oil recovery projects, see § 27-31-102.

§ 27-25-723. Constitutionality.

If any clause, sentence, paragraph or part of this article shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, which changes or materially affects the scheme and method of taxation herein provided for, or which in anywise prevents or modifies the exemptions provided for under Section 27-25-721 hereof, then the whole of the article shall be invalid, and every law which this article amends, modifies or repeals shall become operative and in full force and effect.

SOURCES: Codes, 1942, § 9417.5-13; Laws, 1948, ch. 447, § 13, eff from and after July 1, 1948.

CHAPTER 27

Vending and Amusement Machine Taxes

Article 1. Amusement Devices 27-27-1
Article 3. Vending and Weighing Machines 27-27-301

ARTICLE 1.

AMUSEMENT DEVICES.

SEC.
27-27-1. Short title.
27-27-3. Definitions.
27-27-5. Tax levied.
27-27-7. License and stickers.
27-27-9. Penalties.
27-27-11. Exemptions.
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27-27-13. License tax in addition to other taxes.
27-27-15. Seizure; penalty for interference with officer; custody.
27-27-17. Records.
27-27-19. Administration.
27-27-21. Payment of taxes and penalties into general fund of county or municipality.

§ 27-27-1. Short title.

This article may be cited as "Slot Amusement Machine Tax Law."

SOURCES: Codes, 1942, § 9418-01; Laws, 1970, ch. 544, § 1, eff from and after July 1, 1970 (approved April 6, 1970).

Cross References — Tax on vending and weighing machines, see § 27-27-301 et seq.

Criminal offenses for gambling, see § 97-33-1 et seq.

Criminal offenses in operation of vending machines, etc., see § 97-33-7.

§ 27-27-3. Definitions.

The words, terms, and phrases, when used in this article, shall have the meaning ascribed to them herein.

(a) "Slot amusement machine" or "machine" means any mechanical device or contrivance which is operated, played, worked, manipulated, or used by inserting or depositing any coin, slug, token, or thing of value, in which may be seen any picture or heard any music, or wherein any game may be played, or any form of diversion had.

(b) "Officer collecting the tax" means the tax collector of the county, or, in the case of a municipality, the person who collects the taxes for the municipality by whatever title he may be known.

(c) "Person" means and includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, or other group or combination acting as a unit and includes the plural as well as the singular in number.

SOURCES: Codes, 1942, § 9418-02; Laws, 1970, ch. 544, § 2; Laws, 1994, ch. 440, § 1, eff from and after January 1, 1995.

Cross References — Department of Revenue, see § 27-3-1 et seq.

§ 27-27-5. Tax levied.

(1) The board of supervisors of each county and the governing authorities of each municipality may levy, assess and collect annual license taxes according to the following schedules:

(a) For each machine wherein may be seen any picture or heard any music, a license tax for each such machine the sum of Twenty-seven Dollars ($27.00).

(b) For each machine (not elsewhere specifically taxed in this section) wherein or whereby any game may be played or any form of diversion had, a license tax for each such machine the sum of Forty-five Dollars ($45.00).

(c) For each machine (not elsewhere specifically taxed in this section) wherein or by means of which children may obtain a ride upon a "hobby horse" or the figure of any animal, or upon the figure of a boat, airplane, rocket, or other such machine, a license tax of Eighteen Dollars ($18.00) for each machine.

(2) Any incorporated municipality may levy the tax authorized in subsection (1) of this section where such machines are located within the corporate limits of said municipalities, and where appropriate ordinance levying and imposing the tax has been adopted.

(3) Any county may levy the tax authorized in subsection (1) of this section where such machines are located outside of an incorporated municipality and where the appropriate ordinance levying and imposing the tax has been adopted.

SOURCES: Codes, 1942, § 9418-03; Laws, 1970, ch. 544, § 3; Laws, 1994, ch. 440, § 2, eff from and after January 1, 1995.

Cross References — Refund of taxes generally, see § 27-73-1 et seq.

ATTORNEY GENERAL OPINIONS

The general rule is that the taxes imposed by Section 27-27-301 on vending machines or by Section 27-27-5 on amusement machines are to be collected in addition to any privilege tax paid pursuant to Section 27-17-9 by the business where such machines are located; however, exceptions to this rule are provided by Sections 27-27-305 and 27-27-11. Follis, Apr. 29, 2003, A.G. Op. 03-0185.

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. 2d, Amusements and Exhibitions § 29 et seq.

CJS. 30A C.J.S., Entertainment and Amusement; Sports §§ 33, 38, 40, 41, 50 et seq.

§ 27-27-7. License and stickers.

Every person engaged in the business of owning or placing on location for the purpose of operation any slot amusement machine shall file an application for a license with the officer collecting the tax on forms furnished by him for that purpose. The application shall contain such information as may be required and shall be accompanied by remittance for the amount of tax and any penalty required.

The tax levied shall be due and payable annually and all licenses issued under the provisions of this article shall expire twelve (12) months from the date of purchase. A license may be renewed and stickers affixed to the machine without penalty during the anniversary month twelve (12) months from the date of purchase. The amount of the license tax to be paid for a period of less than twelve (12) months shall be that proportionate amount of the annual license tax that the number of months, or fractional part thereof, remaining until the anniversary month next bears to twelve (12) months.

The officer collecting the tax shall issue a license or sticker on a form to be prescribed by him. Such license or stickers shall be securely affixed or attached to the machine to which it applies in such manner as to be readily visible and shall be affixed before the machine is operated or played. The absence of a proper license or sticker affixed to a machine shall be prima facie evidence of failure to pay the tax levied for operation of the machine.

The license shall entitle the owner or the person placing the machine on location for the purpose of operation to operate a machine of the type specified for twelve (12) months.

When ownership of a machine upon which a valid license or sticker is attached is transferred to another person, no additional tax shall be required. If the machine is moved to a location in a county or municipality other than the county or municipality in which the machine has been properly licensed, then no additional license or tax shall be required or due until the expiration of the current license. In no case may a license be transferred from one machine to another machine.

No refund shall be allowed for failure or inability to exercise the privilege granted after the license has been issued.

SOURCES: Codes, 1942, § 9418-04; Laws, 1970, ch. 544, § 4; Laws, 1994, ch. 440, § 3; Laws, 1998, ch. 403, § 1, eff from and after July 1, 1998.

RESEARCH REFERENCES

Am Jur. 4 Am. Jur. 2d, Amusements and Exhibitions § 29 et seq.

CJS. 53 C.J.S., Licenses § 55.

86 C.J.S., Entertainment and Amusement; Sports § 19 et seq.

§ 27-27-9. Penalties.

Any person engaged in the business of owning or placing on location for the purpose of operation, any slot amusement machine without the payment of the tax imposed herein, shall be liable for the amount of tax and fifty percent (50%) of the amount of the tax as penalty.

Any person who has paid the tax for the operation of a machine, but who has failed to affix the license or sticker to the machine shall also be liable for fifty percent (50%) of the amount of the tax as penalty.

It shall be unlawful for any person to place on location any machine in any county or municipality that has imposed the tax without paying the tax herein levied.

SOURCES: Codes, 1942, § 9418-05; Laws, 1970, ch. 544, § 5; Laws, 1994, ch. 440, § 4, eff from and after January 1, 1995.

Cross References — Action to recover tax, penalty and interest, see § 27-35-5.

§ 27-27-11. Exemptions.

This article shall not apply to any machine operated for legal gaming purposes at a gaming establishment licensed by the Mississippi Gaming Commission, to bingo or pull-tab machines which are located on the premises of charitable bingo licensees, to any machine kept at a regular place of business of distributors or manufacturers for sale or lease without being operated, to any pool table operated in a place of business commonly known as a pool hall or billiard parlor when the gross income from the operation of such pool table is taxable under the Mississippi Sales Tax Law, or to any antique coin machine as defined in Section 27-27-12.

SOURCES: Codes, 1942, § 9418-06; Laws, 1970, ch. 544, § 6; Laws, 1992, ch. 371, § 3; Laws, 1994, ch. 440, § 5, eff from and after January 1, 1995.

Cross References — Mississippi Sales Tax Law, see § 27-65-1 et seq.

Sales tax on billiard parlors and pool halls, see § 27-65-23.

Criminal offenses for gambling, see § 97-33-1 et seq.

ATTORNEY GENERAL OPINIONS

The general rule is that the taxes imposed by Section 27-27-301 on vending machines or by Section 27-27-5 on amusement machines are to be collected in addition to any privilege tax paid pursuant to Section 27-17-9 by the business where such machines are located; however, exceptions to this rule are provided by Sections 27-27-305 and 27-27-11. Follis, Apr. 29, 2003, A.G. Op. 03-0185.

§ 27-27-12. Antique coin machines.

(1) The purpose of this section is to protect and foster the collection and restoration of antique coin machines not used for gambling purposes, due to their aesthetic value and significance in Mississippi history.

(2) An "antique coin machine" is defined as any mechanical device or contrivance that is twenty-five (25) or more years old and that is operated, played, worked, manipulated or used by inserting or depositing any coin, slug, token, or thing of value, in which any game may be played or in which may be seen any picture or heard any music or any form of diversion had, including, but not limited to, an antique slot machine, antique gambling device or antique gaming machine.

(3) An antique coin machine may be owned and possessed in this state and shall not be subject to confiscation or destruction without a judgment of court as provided for in this section, but may be seized as evidence when operated for unlawful gambling purposes.

(4) An antique coin machine seized as evidence in connection with unlawful gambling shall not be destroyed, altered or sold until the owner has been afforded a reasonable opportunity to present testimony and other evidence in court that the machine was not operated for unlawful gambling. If the court determines by a final and definitive judgment that such machine was operated for unlawful gambling, the court shall order the destruction of such machine, but if the judgment is in favor of the owner, such machine shall be returned to its owner.

(5) An antique coin machine may be displayed only in private dwellings or while being offered for sale by a licensed retail dealer other than one licensed to sell alcoholic beverages. Such machine must be clearly marked by placard or otherwise that indicates that it is an antique and is not to be used for gambling purposes. If an antique coin machine is displayed in any other manner, it shall not be subject to the provisions of subsections (3) and (4) of this section.

SOURCES: Laws, 1992, ch. 371, § 1, eff from and after July 1, 1992.

Cross References — Municipal authorities not authorized to regulate or prohibit ownership or display of antique coin machines, see § 21-19-33.

Exemption of antique coin machines from amusement machine tax, see § 27-27-11.

Exception of antique coin machine from definition of "gaming device" under Mississippi Gaming Control Act, see § 75-76-5.

Exception of antique coin machines from definition of unlawful gambling devices, see § 97-33-7.

JUDICIAL DECISIONS

1. In general.

Where slot machines were seized pursuant to § 97-33-7 before the enactment of § 27-27-12, which provides an explicit exception from § 97-33-7 for antique coin machines not used for gambling purposes, the case would be remanded to allow the owner to show that the seized slot machines were at least 25 years old and were not connected with any gambling activities. Beatty v. State, 627 So. 2d 355 (Miss. 1993).

§ 27-27-13. License tax in addition to other taxes.

The license tax levied by this article shall be in addition to all other taxes levied by law.

SOURCES: Codes, 1942, § 9418-07; Laws, 1970, ch. 544, § 7, eff from and after July 1, 1970 (approved April 6, 1970).

§ 27-27-15. Seizure; penalty for interference with officer; custody.

The officer collecting the tax or any agent appointed by him shall have full and complete authority, without an order from any court, to take possession of any slot amusement machine, and keep, seal or otherwise prevent the operation of such machine for failure to pay the license tax and any penalty, or for operation of such machine without a proper license or sticker affixed thereto.

When such machine shall have been seized or possession taken to prevent further unlawful use thereof, the same shall remain under the exclusive jurisdiction of such officer or agent seizing same until released by said officer or agent upon payment of the proper tax, penalty and costs, or until same is disposed of under a writ of venditioni exponas issued by the proper court for the collection of the taxes due, together with penalties and costs.

Any operation of any machine after seizure of same, or any disturbance of possession or notice of seizure posted by an agent or officer, shall be unlawful, and any person violating this provision shall be guilty of a misdemeanor and upon conviction thereof, may be fined not more than Five Hundred Dollars ($500.00) or imprisoned in the county jail for not more than six (6) months, or may be fined and imprisoned in the discretion of the court within the limitations aforesaid.

SOURCES: Codes, 1942, § 9418-08; Laws, 1970, ch. 544, § 8; Laws, 1994, ch. 440 § 6, eff from and after January 1, 1995.

Cross References — "Slot amusement machine" defined, see § 27-27-3.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-27-17. Records.

It shall be the duty of every person taxable under this article to keep and preserve for a period of three (3) years adequate records showing the location on which each machine is placed for the purpose of operation, type of machine and the size coin required to operate the machine one (1) time.

SOURCES: Codes, 1942, § 9418-09; Laws, 1970, ch. 544, § 9, eff from and after July 1, 1970 (approved April 6, 1970).

§ 27-27-19. Administration.

The administration of this article is vested in and shall be exercised by the officer collecting the tax who may act through his duly appointed and qualified deputies or agents, who shall serve under him and perform such duties as may be required.

The officer collecting the tax may promulgate such regulations, not inconsistent with this article, as he may deem necessary to enforce its provisions. The officer collecting the tax shall keep full and accurate records of all moneys received by him and shall preserve all applications for slot amusement machine licenses and copies of licenses issued therefrom for a period of three (3) years. Said applications and copies of the licenses shall be open to inspection by the public.

SOURCES: Codes, 1942, § 9418-10; Laws, 1970, ch. 544, § 10; Laws, 1994, ch. 440, § 7, eff from and after January 1, 1995.

Cross References — Sales tax law, see § 27-65-1 et seq.

§ 27-27-21. Payment of taxes and penalties into general fund of county or municipality.

All taxes levied and penalties imposed by this article and required to be paid shall be payable in cash or by personal check, cashier's check, money order, or bank exchange which shall be deposited in the general fund of the county or municipality, as appropriate, on the same day in which they are collected. No remittances other than cash shall be final discharge of liability for the tax and any penalty imposed.

The taxes and penalties collected shall be paid into the general fund of the county or municipality, as appropriate, in the same manner as other taxes collected by the officer collecting the tax.

SOURCES: Codes, 1942, § 9418-11; Laws, 1970, ch. 544, § 11; Laws, 1984, ch. 478, § 19; Laws, 1994, ch. 440, § 8, eff from and after January 1, 1995.

Editor's Note — Laws of 1984, ch. 478, § 3, effective from and after July 1, 1984, provides:

"SECTION 3. For purpose of this section, requirements that funds be deposited on the same day "collected" shall mean when remittances of tax collections and reports in connection therewith shall have been subjected to only minimum essential but expeditious processing."

Laws of 1984, ch. 478, § 35, provides:

"SECTION 35. "The provisions of this act shall control if in conflict with any other statute, the operation of which would tend to frustrate the purposes of this act."

ARTICLE 3.

VENDING AND WEIGHING MACHINES.

SEC.
27-27-301. Privilege tax on weighing machines, machines selling postage stamps, merchandise, etc., levied.
27-27-303. Administration and enforcement.
27-27-305. Exemptions.

§ 27-27-301. Privilege tax on weighing machines, machines selling postage stamps, merchandise, etc., levied.

There is hereby levied and imposed in lieu of all licenses and privilege taxes heretofore levied, except the taxes levied by the Mississippi Sales Tax Law, a tax upon each person, firm, association or corporation owning or operating any automatic weighing machine, any automatic vending machine or device for dispensing or selling postage stamps, any automatic vending machine or device for dispensing or selling cigarettes, and automatic machines selling and vending merchandise for the sale of which any tax has been paid by the owner, which service, stamps, or merchandise is obtained by depositing therein any token, coin, or coins, a tax according to the following schedules:

(a) Upon each person operating, owning or permitting to be operated in his place of business any automatic or slot weighing machine, or any automatic slot vending machine, or other devices dispensing or selling postage stamps, for each such machine $2.00

(b) Upon each person operating, owning, or permitting to be operated in his place of business any automatic vending machine wherein is kept within the machine cigarettes on which the specific privilege tax of selling such articles of merchandise at retail has been paid by the owner of the machine, or the owner of the place of business where such machine is operated, to be obtained by depositing therein any token, coin, or coins, for each such machine $2.50

(c) Upon each person operating, owning, or permitting to be operated in his place of business any automatic vending machine where any service is rendered and not elsewhere taxed or where is kept within the machine any article of merchandise to be obtained by depositing therein any token, coin, or coins, as follows:

For each machine requiring the deposit of a token, coin, or coins, of less than Five Cents (5¢) $2.50

For each machine requiring the deposit of a token, coin, or coins, of Five Cents (5¢) and less than Ten Cents (10¢) $5.00

For each machine requiring the deposit of a token, coin, or coins of Ten Cents (10¢) and not more than Twenty Cents (20¢) $7.50

For each machine requiring the deposit of a token, coin, or coins, of more than Twenty Cents (20¢) $10.00

Provided, however, that such machines requiring deposits of Ten Cents (10¢) or less and vending food products only shall be exempt from the provisions of this article, and no such privilege tax shall be required to be paid when such machines are sponsored by local nonprofit civic service clubs or any other organization either incorporated or unincorporated and existing and operating under the laws of the State of Mississippi when such clubs or organizations expend the proceeds from such machines for charitable purposes only.

SOURCES: Codes, 1942, § 9426-01; Laws, 1944, ch. 132, § 1; Laws, 1946, ch. 269, § 1; Laws, 1958, ch. 573; Laws, 1966, ch. 637, § 1; Laws, 1983, ch. 537, eff from and after July 1, 1983.

Cross References — Liability of owners of coin-operated laundries for tax imposed under local privilege tax law, see § 27-17-230.

Tax on amusement devices, see § 27-27-1 et seq.

Sales tax law, see § 27-65-1 et seq.

Criminal offenses for gambling, see § 97-33-1 et seq.

Criminal offenses in operation of vending machines, etc., see § 97-33-7.

JUDICIAL DECISIONS

1. In general.

The title of this statute [Code 1942, § 9426-01] meets the requirement of section 71 of the Constitution. Corso v. City of Biloxi, 201 Miss. 532, 29 So. 2d 638 (1947), error overruled, 201 Miss. 539, 30 So. 2d 237 (1947).

ATTORNEY GENERAL OPINIONS

Vending machine tax applies to coin operated laundry machines; although owner is required to pay local privilege tax, "not otherwise taxed" exception does not apply when other tax is general local privilege tax. Valentine, Jan. 24, 1990, A.G. Op. #90-0027.

Because gum-ball machines are vending machines which require both deposits of less than ten cents and which vend food products, they are exempt from privilege taxes. Howell, Jan. 16, 1992, A.G. Op. #92-0012.

The general rule is that the taxes imposed by Section 27-27-301 on vending machines or by Section 27-27-5 on amusement machines are to be collected in addition to any privilege tax paid pursuant to Section 27-17-9 by the business where such machines are located; however, exceptions to this rule are provided by Sections 27-27-305 and 27-27-11. Follis, Apr. 29, 2003, A.G. Op. 03-0185.

RESEARCH REFERENCES

CJS. 53 C.J.S., Licenses § 55.

§ 27-27-303. Administration and enforcement.

All of the general provisions of the Local Privilege Tax Law shall apply to and are hereby adopted as the means by which the provisions of this article may be enforced, and the taxes and penalties imposed may be collected.

SOURCES: Codes, 1942, § 9426-02; Laws, 1944, ch. 132, § 2; Laws, 1946, ch. 269, § 2.

Cross References — Local privilege tax law, see § 27-17-1 et seq.
Action to recover tax, penalty and interest, see § 27-35-5.

JUDICIAL DECISIONS

1. In general.

This statute [Code 1942, § 9426-02] does not amend chapter 137, Laws of 1944 (Code 1942, § 9696-01 et seq). Corso v. City of Biloxi, 201 Miss. 532, 29 So. 2d 638 (1947), error overruled, 201 Miss. 539, 30 So. 2d 237 (1947).

This section [Code 1942, § 9426-02] limits the taxes imposed by Code 1942, § 9426-01 to collection by and for the benefit of counties and municipalities which adopt it. Corso v. City of Biloxi, 201 Miss. 532, 29 So. 2d 638 (1947), error overruled, 201 Miss. 539, 30 So. 2d 237 (1947).

The adoption merely by reference of the provisions of the Local Privilege Tax Act (Laws, 1944, chap. 137) as to means of enforcement does not violate the constitutional provision (§ 61) requiring the insertion at length of the amended act where such act is amended by reference, since the adoption provision in question did not constitute an amendment within the purview of the constitutional provision. Corso v. City of Biloxi, 201 Miss. 532, 29 So. 2d 638 (1947), error overruled, 201 Miss. 539, 30 So. 2d 237 (1947).

§ 27-27-305. Exemptions.

No tax shall be imposed under the terms of this article upon any machine or machines taxed under subsection (c) of Section 27-27-301 of this article, when owned and operated by the owner of a store when such machines are stationed in said store and when the owner of said store has paid the proper privilege tax required of him under the section of the regular privilege tax law imposing privilege taxes on stores; nor shall the tax imposed by this article apply to persons operating such machines for the sale of articles to their own employees exclusively, without profit, where no privilege tax has been paid for operating a store; provided further, that nothing contained herein shall be construed to permit the licensing of any gambling machine or device.

SOURCES: Codes, 1942, § 9426-03; Laws, 1944, ch. 132, § 7; Laws, 1946, ch. 269, § 3.

Cross References — Local privilege taxes on stores, see § 27-17-365.

ATTORNEY GENERAL OPINIONS

The general rule is that the taxes imposed by Section 27-27-301 on vending machines or by Section 27-27-5 on amusement machines are to be collected in addition to any privilege tax paid pursuant to Section 27-17-9 by the business where such machines are located; however, exceptions to this rule are provided by Sections 27-27-305 and 27-27-11. Follis, Apr. 29, 2003, A.G. Op. 03-0185.

CHAPTER 29

Ad Valorem Taxes—General Provisions

Sec.

27-29-1. Collectors to have certain credits.
27-29-3. Allowance of credits not made until certain list produced.
27-29-5. Filing of lists of amendments to assessments.
27-29-7. Certification of correctness of lists.
27-29-9. Penalties for failure to make lists.
27-29-11. Tax collector's monthly report; taxes paid over.
27-29-13. Final report at end of fiscal year.
27-29-15. Tax collectors to make reports monthly of all levee taxes collected.
27-29-17. Notification to district attorney of default; commencement of suit.
27-29-19. Suits against tax collectors to have precedence.
27-29-21. Proceedings in behalf of county.
27-29-23. Repealed.
27-29-25. Failure of collector to report; suspension.
27-29-27. Clerk to examine the report.
27-29-29. Liability of assessor and collector.
27-29-31. Tax collector about to go out of office; duties.
27-29-33. Tax collector about to go out of office; statement of uncollected taxes; collection of taxes.
27-29-35. Counties and municipalities required to reduce ad valorem taxes in a certain amount if they receive severance tax revenue from offshore drilling on the Mississippi Gulf Coast.

§ 27-29-1. Collectors to have certain credits.

The auditor, in his settlements with the tax collector, shall credit him with the amount of state taxes on all lands sold for taxes and struck off to the state, with the legal fees of the publisher of the newspaper for advertising such land for sale; and the collector shall also be credited in his settlement of county or any other state taxes with the amount of taxes on all lands sold to the state. Land purchased by the state for taxes shall not again be sold for taxes until redeemed; but if a tax collector should erroneously sell any state lands, the auditor, in his settlement with such tax collector, shall credit him with the correct amount of state taxes on only such state lands as are certified by the land commissioner to belong to the state, and with the legal fees of the newspaper for publishing such lands for sale; and the collector shall also be credited in his settlement of county or other taxes with the amount of taxes on such lands certified by the land commissioner.

SOURCES: Codes, 1857, ch. 3, art. 42; 1871, § 1704; 1880, § 545; 1892, § 3837; 1906, § 4355; Hemingway's 1917, § 6989; 1930, § 3284; 1942, § 9988.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Section 7-11-4 provides that the words "state land commissioner", "land commissioner", "state land office", and "land office" shall mean the secretary of state.

Cross References — County assessors and tax collectors, see § 27-1-1 et seq.

Production of tax collector's cash book to auditor, see § 27-41-41.

Redemption of land sold for taxes, see § 27-45-1 et seq.

Collector's credits for insolvencies, see § 27-49-5.

JUDICIAL DECISIONS

1. In general.

After the sale of land to the state for taxes, it is not thereafter subject to sale for taxes accruing thereon unless and until it should be redeemed from that sale. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

No one is required to pay the taxes accruing on land after a sale to the state for taxes except the one who redeems it from that sale and then not until he offers to redeem it. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

Where the record owner of land, sold to the state for delinquent taxes, applied to the chancery clerk for a release thereof, but the chancery clerk failed to collect the 1934 taxes which were then due, a subsequent sale of the land for such taxes was void, where there was no evidence that the record owner fraudulently participated in the clerk's failure to collect such taxes. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

Under this section [Code 1942, § 9988] certificate of redemption will be construed as applying to valid tax sale rather than to a void sale despite conflicting recitals. Bousquet v. Brown, 152 Miss. 171, 119 So. 166 (1928).

The statute forbidding the sale of land purchased by state for taxes until redeemed held inapplicable to invalid sale. Celtic Land & Imp. Co. v. L.N. Dantzler Lumber Co., 144 Miss. 529, 110 So. 438 (1926).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 788.

CJS. 85 C.J.S., Taxation § 1137 et seq.

§ 27-29-3. Allowance of credits not made until certain list produced.

An allowance shall not be made by any auditing officer to any tax collector for the taxes on any land for which he claims credit until he shall present a list thereof, with his affidavit annexed that it is a correct list, and that he has not received any taxes thereon from any person.

SOURCES: Codes, 1880, § 547; 1892, § 3839; 1906, § 4356; Hemingway's 1917, § 6990; 1930, § 3285; 1942, § 9989.

JUDICIAL DECISIONS

1. In general.

Tax collector's bill to recover amount of insolvent list allowed by supervisors did not state cause of action where it did not allege amount had been paid over in cash and was sought as refund. Bishop v. Chickasaw County, 182 Miss. 147, 180 So. 395 (1938).

§ 27-29-5. Filing of lists of amendments to assessments.

Before the fifteenth day of September every year and before the fifteenth day of January of every year, within which the tax collector's term of office shall expire, the clerk of the board of supervisors shall file, with the auditor of public accounts, on blanks to be furnished by such auditor, the following lists of the amendments in assessments made by the board of supervisors, to wit:

Additional and raised assessments of personal property.
Additional and raised assessments of real property.
Reductions in assessments of real property.
Reductions in assessments of personal property.
Erroneous assessments of real property.
Erroneous assessments of personal property.

SOURCES: Codes, Hemingway's 1917, § 6991; 1930, § 3286; 1942, § 9990; Laws, 1914, ch. 122.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — County auditor's settlement of accounts of tax collector, see § 19-17-11 et seq.

Certification as to truth and correctness of lists required by this section, see § 27-29-7.

Penalities for failure to file lists as required by this section, see § 27-29-9.

§ 27-29-7. Certification of correctness of lists.

The clerk of the board of supervisors shall certify to the truth and correctness of such lists of amendments to assessments referred to in Section 27-29-5 and shall further certify that he has compared the items listed for credit with the stub tax receipts and that no taxes have been collected on any such items.

SOURCES: Codes, Hemingway's 1917, § 6992; 1930, § 3287; 1942, § 9991; Laws, 1914, ch. 122.

Cross References — Penalties for failure to file lists as required by § 27-29-5, see § 27-29-9.

Clerk's transmission of list of uncollected taxes to state auditor, see § 27-29-33.

§ 27-29-9. Penalties for failure to make lists.

Any such clerk of the board of supervisors, who shall fail to make such list or lists, referred to in Section 27-29-5, by the time specified, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not exceeding one hundred dollars for each offense.

SOURCES: Codes, Hemingway's 1917, § 6993; 1930, § 3288; 1942, § 9992; Laws, 1914, ch. 122.

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

JUDICIAL DECISIONS

1. In general.

It is mandatory on state auditor to honor state tax collector's requisitions against commission fund for expenses and salaries. Miller v. White, 157 Miss. 114, 126 So. 833 (1930).

§ 27-29-11. Tax collector's monthly report; taxes paid over.

The tax collector shall make reports in writing, verified by his affidavit, on the first day of each month or within twenty (20) days thereafter, except as hereinafter provided, to the Auditor of Public Accounts and to the clerk of the board of supervisors, of all taxes collected by him during the preceding month for the state, levee and county respectively; and if he has collected none, the report shall be made out and state that fact. He shall, at or within the same time, pay over all taxes collected to the State Treasurer; however, all taxes collected by him for the county shall be paid into the county depository on the day such taxes are collected or on the next business day thereafter.

SOURCES: Codes, 1857, ch. 3, art. 59; 1871, § 1724; 1880, § 548; 1892, § 3840; 1906, § 4357; Hemingway's 1917, § 6994; 1930, § 3289; 1942, § 9993; Laws, 1888, p. 33; Laws, 1904, ch. 161; Laws, 1918, ch. 137; Laws, 1985, ch. 514, § 15; Laws, 1986, ch. 305, § 3, eff from and after passage (approved February 27, 1986).

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of

Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Reports and payment of state tax collections to state treasurer, see §§ 7-9-19, 7-9-21.

Grand jury's examination of tax collector's books, see § 13-5-59.

Debits and credits to tax collector by county auditor, see § 19-17-13 et seq.

Monthly reports of levee taxes, see § 27-29-15.

Clerk's transmission of list of uncollected taxes to state auditor, see § 27-29-33.

Collector's report of insolvencies, see § 27-49-1.

Tax collector's payment of state tax collections into state depository, see § 27-105-23.

Penalty on tax collector for failure to make settlement, see § 97-11-47.

JUDICIAL DECISIONS

1. In general.

Where a city entered into a contract with a certified public accountant on May 4, 1948, to audit the county books to determine the city's share of taxes collected by the county for road purposes on property within the city, and where the sheriff was due to make his final report of his collections by October, 1948, the contract between the city and the certified public accountant was no premature, so as to render it void. Smith v. City of Winona, 222 Miss. 318, 75 So. 2d 903 (1954).

A tax collector, having received tax money although paid under protest, is under a positive duty to pay over the same to the proper authorities on the first day of the month immediately following such collection, or within twenty days thereafter, under the penalty of payment of 30 per cent per annum damages, etc. Yazoo & Miss. V. Ry. v. Conner, 188 Miss. 352, 194 So. 915 (1940).

A tax collector was not liable to a taxpayer for refund of taxes paid under protest, since a tax collector is under a mandatory duty to pay over the money collected to the proper authorities on the first day of the month immediately following such collection or within twenty days thereafter, under the penalty of being subject to suspension and damages. Yazoo & Miss. V. Ry. v. Conner, 188 Miss. 352, 194 So. 915 (1940).

A collector of taxes is under a duty to account for, and pay over to the proper authorities, all funds which come into his hands officially, notwithstanding that the tax collected by him may be illegal, or void, or improperly collected, and he is liable on his official bond for failure to do so. Adams v. Saunders, 89 Miss. 784, 42 So. 602, 119 Am. St. R. 720, 11 Am. Ann. Cas. 327 (1907).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 788.

CJS. 85 C.J.S., Taxation § 1135.

§ 27-29-13. Final report at end of fiscal year.

The tax collector's final report and settlement with the auditor of public accounts and with the clerk of the board of supervisors for the taxes of any fiscal year shall be made on or within fifteen (15) days after the first day of

November next thereafter. If the tax collector fails to make any report, or to pay over any taxes as above required, he shall pay damages of thirty per centum (30%) thereon, and interest on said amount of principal and damages at the rate of six per centum (6%) per annum for the time the same shall be due until paid. The auditor and clerk shall not omit in any case to charge the damages to the collector when incurred, but the same shall be remitted on the certificate of the governor and attorney general that they are satisfied that the delay has not been wilful or was not due to inexcusable neglect by the collector.

SOURCES: Codes, 1942, § 9994; Laws, 1934, ch. 188.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Liability of assessors and collectors for failure to perform duties, see § 27-29-29.

Collector's report of insolvencies, see § 27-49-1.

JUDICIAL DECISIONS

1. In general.

Where a city entered into a contract with a certified public accountant on May 4, 1948, to audit the county books to determine the city's share of taxes collected by the county for road purposes on property within the city, and where the sheriff was due to make his final report of his collections by October, 1948, the contract between the city and the certified public accountant was not premature, so as to render it void. Smith v. City of Winona, 222 Miss. 318, 75 So. 2d 903 (1954).

On default of the tax collector where the sureties pay the amount of his shortage with interest and thirty per cent penalty those sureties paying it are entitled to compel contributions from the other sureties. Russell v. Clark, 114 Miss. 898, 75 So. 691 (1917).

A surety on a tax collector's bond is liable for taxes collected and damages provided by law. State ex rel. Dist. Att'y v. Greer, 109 Miss. 558, 68 So. 778 (1915).

A county tax collector who collects taxes without legal authority is still liable on his official bond to account for such illegal taxes. Adams v. Saunders, 89 Miss. 784, 42 So. 602, 119 Am. St. R. 720, 11 Am. Ann. Cas. 327 (1907).

The legal rate of interest from the date the amount was due to the date of payment will be charged against a county tax collector for withholding such funds. Adams v. Saunders, 89 Miss. 784, 42 So. 602, 119 Am. St. R. 720, 11 Am. Ann. Cas. 327 (1907).

§ 27-29-15. Tax collectors to make reports monthly of all levee taxes collected.

The tax collector of each county within the Yazoo-Mississippi Delta Levee District shall make reports in writing, verified by affidavit, on the first day of each month, or within twenty (20) days thereafter, to the auditor of public accounts and to the treasurer of the board of levee commissioners for the Yazoo-Mississippi Delta of all taxes collected by him during the preceding month for taxes due said board of levee commissioners for the Yazoo-Mississippi Delta, for levee taxes, and if he has collected none, the report shall be made out and state that fact. He shall, at or within the same time, pay over all taxes so collected by him to the treasurer of the said board of levee commissioners. His final report and settlement with the auditor of public accounts and with the treasurer of said board of levee commissioners for the Yazoo-Mississippi Delta for the taxes of any fiscal year so collected by him for said board of levee commissioners shall be made on or within twenty (20) days after the first day of September of the same year. If any such tax collector shall fail to make any report as hereinbefore provided for, or to pay over any taxes as above mentioned and required, he and the sureties on his bond as levee tax collector shall be liable for and shall pay damages at the rate of thirty per centum (30%) per annum thereon and interest on the aggregate amount of principal and damages so due as aforesaid at the rate of six per centum (6%) per annum from the date when such taxes should have been reported and paid over as above herein provided. The said auditor and the said treasurer shall not omit in any case to charge the damage above provided for the collector, when incurred, but the same may be remitted on the certificate of the governor and attorney general, that they are satisfied that the delay has not been wilful, or unavoidable by the collector.

SOURCES: Codes, Hemingway's 1917, § 6995; 1930, § 3291; 1942, § 9998; Laws, 1906, ch. 127; Laws, 1932, ch. 152.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Monthly reports of tax collector generally, see § 27-29-11.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 788.

CJS. 85 C.J.S., Taxation § 1135.

§ 27-29-17. Notification to district attorney of default; commencement of suit.

If any collector fails to pay into the state treasury the amount of taxes due the state within the time prescribed, the auditor shall immediately notify the district attorney, and shall furnish him a statement under his hand and seal of office of the amount due by the collector. The district attorney shall forthwith commence suit on the bond of the collector for the amount due, of which the statement, certified by the auditor, shall be competent evidence. If the auditor be not informed of the amount, he shall so state, and the district attorney shall investigate the matter and bring suit for the amount due.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 2 (30); 1857, ch. 3, art. 60; 1871, § 1725; 1880, § 549; 1892, § 3841; 1906, § 4358; Hemingway's 1917, § 6997; 1930, § 3292; 1942, § 9999.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the first sentence. The words "If any collector fail to pay" were changed to "If any collector fails to pay". The Joint Committee ratified the correction at its May 20, 1998, meeting, and the section has been reprinted in the supplement to reflect the corrected language.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Governor's power to suspend defaulting tax collectors, see Miss. Const. Art. 5, § 125 and § 7-1-57 et seq.

Reporting defaulting tax collectors to grand jury, see § 19-17-19.

Prosecutions and actions by Department of Revenue for defaults and violations under tax laws, see § 27-3-33.

Civil liability of assessors and collectors, see § 27-29-29.

JUDICIAL DECISIONS

1. In general.

Where a tax collector fails to pay over taxes collected within the time prescribed by law the surety on his bond is liable to damages therefor. State ex rel. Dist. Att'y v. Greer, 109 Miss. 558, 68 So. 778 (1915).

The notifying the district attorney of the tax collector's failure to pay taxes is not a condition precedent to the bringing of suit against the defaulting tax collector and his surety. State ex rel. Dist. Att'y v. Greer, 109 Miss. 558, 68 So. 778 (1915).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 788.

CJS. 85 C.J.S., Taxation § 1145.

§ 27-29-19. Suits against tax collectors to have precedence.

Suits against tax collectors as provided in Section 27-29-17 shall be tried at the return term and shall have precedence over all other civil causes. Judgment shall be given for the amount due by the collector with thirty per centum (30%) per annum damages, after deducting all legal allowances to which he may be entitled.

SOURCES: Codes, 1857, ch. 3, art. 61; 1871, § 1726; 1880, § 550; 1892, § 3842; 1906, § 4359; Hemingway's 1917, § 6998; 1930, § 3293; Laws, 1942, § 10000.

JUDICIAL DECISIONS

1. In general.

A tax collector, having received tax money although paid under protest, is under a positive duty to pay over the same to the proper authorities on the first day of the month immediately following such collection, or within twenty days thereafter, under the penalty of being subject to suspension from office by the Governor, and the payment of 30 per cent per annum damages, etc. Yazoo & Miss. V. Ry. v. Conner, 188 Miss. 352, 194 So. 915 (1940).

A tax collector was not liable to a taxpayer for refund of taxes paid under protest, since a tax collector is under a mandatory duty to pay over the money collected to the proper authorities on the first day of the month immediately following such collection or within twenty days thereafter, under the penalty of being subject to suspension and damages. Yazoo & Miss. V. Ry. v. Conner, 188 Miss. 352, 194 So. 915 (1940).

Where the tax collector has failed to pay over taxes collected within the time prescribed by law the surety on his bond is liable for damages. State ex rel. Dist. Att'y v. Greer, 109 Miss. 558, 68 So. 778 (1915).

In such a suit the defendant may set off the collector's commissions. State ex rel. Dist. Att'y v. Greer, 109 Miss. 558, 68 So. 778 (1915).

It is unnecessary for the recovery of damages that the declaration demand the same. Damages are incident to the debt. State v. Lewenthall, 55 Miss. 589 (1878).

Judgment should not be rendered by default final, but a writ of inquiry, in case a defense be not made, should be awarded to ascertain the amount due the state with damages, "after deducting all legal allowances." Boykin v. State, 50 Miss. 375 (1874).

§ 27-29-21. Proceedings in behalf of county.

Like proceedings to those provided in Section 27-29-17 shall be instituted by the district attorney, or any attorney employed by the board of supervisors, for nonpayment of county taxes, on notification by the clerk of the board of supervisors of the county, whose duty it shall be to give such notification.

SOURCES: Codes, 1857, ch. 3, art. 62; 1871, § 1717; 1880, § 551; 1892, § 3843; 1906, § 4360; Hemingway's 1917, § 6999; 1930, § 3294; Laws, 1942, § 10001.

JUDICIAL DECISIONS

1. In general.

A tax collector, having received tax money although paid under protest, is under a positive duty to pay over the same to the proper authorities on the first day of the month immediately following such collection, or within twenty days thereafter, under the penalty of payment of 30 per cent per annum damages, etc. Yazoo & Miss. V. Ry. v. Conner, 188 Miss. 352, 194 So. 915 (1940).

"Like proceedings" embrace the thirty per centum damages. They can be recovered for the county. State v. Lewenthall, 55 Miss. 589 (1878).

It is error in the trial of such cause to permit witnesses who have examined the collector's receipt books and made memoranda of the results of their examinations, to testify as to the amount of taxes collected and to other results of such examinations where the books are not offered in evidence and no reason given for not producing them. State v. Lewenthall, 55 Miss. 589 (1878).

Where tax collector executed separate bonds on different dates during his term of office and with different sureties, the sureties on the second bond were not liable for the taxes collected prior to the date of such bond, and the sureties on the first bond were liable for the acts of the collector prior to that date. Lewenthall v. State, 51 Miss. 645 (1875).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 788.

CJS. 85 C.J.S., Taxation § 1145

§ 27-29-23. Repealed.

Repealed by Laws, 1986, ch. 459, § 44, eff from and after July 1, 1986.

[Codes, 1857, ch. 3, art. 63; 1871, § 1728; 1880, § 552; 1892, § 3844; 1906, § 4361; Hemingway's 1917, § 7000; 1930, § 3295; 1942, § 10002]

Editor's Note — Former § 27-29-23 provided for coroner's liability for defaults in collection.

§ 27-29-25. Failure of collector to report; suspension.

Every tax collector shall make report to the auditor of public accounts and clerk of the board of supervisors, respectively, as hereinbefore provided; and if any tax collector shall not report to the auditor or clerk, and pay over to the state and county treasurers, within twenty (20) days after the last day of each month during the time of collecting taxes, he shall not only be punishable under the criminal laws of this state, but the auditor and clerk of the board of supervisors, after notice to a tax collector in default and continued failure by him to report and pay over, as above provided, shall report the failure to the governor, who may suspend the tax collector and prohibit him from the performance of his functions, and may appoint some suitable person, being a qualified elector of the county, to collect the taxes, who shall give bond, with sureties, as required of tax collectors, to be approved in the same way. Such substituted tax collector shall proceed to collect the taxes remaining uncollected and to make such reports and payments of state and county taxes as the tax collector is required to make; and, for any failure of duty in this respect, he shall be subject to like penalties and proceedings as provided for in case of default by a tax collector.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 17 (55); 1857, ch. 3, art. 8; 1871, § 1729; 1880, § 548; 1892, § 3845; 1906, § 4362; Hemingway's 1917, § 7001; 1930, § 3296; 1942, § 10003.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Governor's power to suspend defaulting tax collectors, see MS Const Art. 5, § 125 and Code § 7-1-57 et seq.

Reporting defaulting tax collectors to grand jury, see § 19-17-19.

Recovery on claim unlawfully acquired by public officer, see § 25-1-49.

Prosecutions and actions by Department of Revenue for defaults and violations under tax laws, see § 27-3-33.

Criminal liability of tax collectors for failure to perform duties, see § 97-11-37.

Criminal penalty on tax collector for failure to make settlement, see § 97-11-47.

JUDICIAL DECISIONS

1. In general.

A tax collector, having received tax money although paid under protest, is under a positive duty to pay over the same to the proper authorities on the first day of the month immediately following such collection, or within twenty days thereafter, under the penalty of being subject to suspension from office by the governor, and the payment of 30 percent per annum damages, etc. Yazoo & Miss. V. Ry. v. Conner, 188 Miss. 352, 194 So. 915 (1940).

ATTORNEY GENERAL OPINIONS

The governor has authority, upon being satisfied that investigations have been closed, to rescind his prior order suspending a tax collector and thereby reinstate her to office. Straughter, Apr. 26, 2005, A.G. Op. 05-0207.

§ 27-29-27. Clerk to examine the report.

Whenever the tax collector shall make a report as provided, it shall be the duty of the clerk of the board of supervisors to examine the same and to carefully compare it with the duplicate tax receipts, the cash book, and all other books and records in the collector's office pertaining to the collection of taxes, and to certify whether the report be true and correct or not. If the report be found to be untrue, and it be not immediately corrected by the collector and the proper amount paid over, the same proceedings shall be taken as though no report or payment had been made.

SOURCES: Codes, 1892, § 3846; Laws, 1906, § 4363; Hemingway's 1917, § 7002; 1930, § 3297; 1942, § 10004; Laws, 1888, pp. 33, 34.

Cross References — Proceedings in case of default, see § 27-29-17.
Preservation of duplicate receipts, see § 27-41-31.
Tax collector's cash book, see § 27-41-39.

JUDICIAL DECISIONS

1. In general.
A tax collector, having received tax money although paid under protest, is under a positive duty to pay over the same to the proper authorities on the first day of the month immediately following such collection, or within twenty days thereafter, under the penalty of being subject to suspension from office by the governor, and the payment of 30 per cent per annum damages, etc. Yazoo & Miss. V. Ry. v. Conner, 188 Miss. 352, 194 So. 915 (1940).

§ 27-29-29. Liability of assessor and collector.

The assessor and collector, with their sureties, shall be severally held liable on their bonds and bound to pay the county or state the full amount of all sums lost to the state or county, respectively, from the failure or neglect of the assessor to assess, return, or otherwise faithfully to complete his assessment, or from any neglect of the collector to collect the taxes assessed. Any taxpayer may cause suit to be instituted for the above, against the assessor and sureties, or the collector and sureties, on his official bond, the person causing suit to be instituted becoming responsible for the costs in the suit. But the failure of the assessor to assess the taxes, or of the tax collector to collect the same, shall not affect the liability of the person or property, who or which ought to have paid the taxes or been assessed.

SOURCES: Codes, 1871, § 1752; 1880, § 557; 1892, § 3849; 1906, § 4366; Hemingway's 1917, § 7005; 1930, § 3299; 1942, § 1005.

Cross References — Civil liability of county officers for failure to perform duties, see § 25-1-45.

Proceedings against assessors and collectors by state tax commission, see § 27-3-33.

Fines or criminal liability of tax collectors for failure to perform duties, see §§ 97-11-37, 97-11-45, 97-11-47.

Fines or criminal liability of tax collectors for embezzlement or extortion, see §§ 97-11-29, 97-11-33.

JUDICIAL DECISIONS

1. In general.

A declaration in a suit under the section is bad if it does not contain an allegation that the person on whose relation the suit is instituted is a taxpayer. French v. State, 53 Miss. 651 (1876).

Where tax collector executed separate bonds on different dates during his term of office and with different sureties, the sureties on the second bond were not liable for the taxes collected prior to the date of such bond, and the sureties on the first bond were liable for the acts of the collector prior to that date. Lewenthall v. State, 51 Miss. 645 (1875).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 788 et seq.

CJS. 84 C.J.S., Taxation §§ 1137, 1146 et seq.

§ 27-29-31. Tax collector about to go out of office; duties.

Every tax collector, at the expiration of his term of office, shall file with the clerk of the board of supervisors of the county, on the first Monday of January, a list of all the uncollected taxes for the current fiscal year, which shall show the name of every person owing taxes, the amount of personalty assessed thereto and the description, section, township, range, and assessed valuation of realty assessed thereto. Said list shall be copied from the real and personal assessment rolls in the order that the assessments occur thereon. The board of supervisors and the county auditor shall carefully examine said list, comparing it with all records pertaining thereto, and allow the retiring tax collector credit for all taxes on so much of said list as they find to be truly and correctly uncollected, and the board shall charge the succeeding tax collector with all taxes so found to be uncollected. Such succeeding tax collector shall proceed to collect them as required by law; and the change in the office shall not in any manner affect the collection of any taxes or the advertisement or sale of any property for taxes; but all books, papers, receipts, assessment rolls, and other documents pertaining to the office of tax collector, and all personal property seized for taxes, shall be delivered by the retiring tax collector to his successor without delay. Sales of real and personal property shall be made by the tax collector in office at the time of the sale.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 17 (45); 1857, ch. 3, art. 7; 1880, § 559; 1892, § 3851; 1906, § 4368; Hemingway's 1917, § 7007; 1930, § 3300; 1942, § 10006.

Cross References — Criminal penalty on tax collector for failure to make settlement, see § 97-11-47.

§ 27-29-33. Tax collector about to go out of office; statement of uncollected taxes; collection of taxes.

The clerk of the board of supervisors shall transmit to the auditor of public accounts a certified copy of the list of uncollected taxes, furnished by the tax collector whose term of office has expired, on or before the first day of February, after it has been filed, together with certified transcripts of orders of the board relating thereto, and shall certify to the truth and correctness of said list. The retiring tax collector shall, within ten (10) days after the expiration of his term of office, pay into state, county, and levee treasuries all taxes collected by him and payable therein, and shall, within said time, make his final settlement with the auditor of the county and with the auditor of public accounts.

SOURCES: Codes, 1880, § 560; 1892, § 3852; 1906, § 4369; Hemingway's 1917, § 7008; 1930, § 3301; 1942, § 10007.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Chancery clerk's certification as to correctness of list of amendments in assessments, see § 27-29-7.

Tax collector's monthly reports of taxes collected, see § 27-29-11.

§ 27-29-35. Counties and municipalities required to reduce ad valorem taxes in a certain amount if they receive severance tax revenue from offshore drilling on the Mississippi Gulf Coast.

From and after July 1, 2004, the board of supervisors of a county shall reduce the ad valorem taxes levied by the county in an amount equal to one-half (½) of the county's share of the revenue derived from the oil and gas severance tax under Sections 27-25-505 and 27-25-705 as a result of offshore drilling on the Mississippi Gulf Coast. From and after July 1, 2004, the governing authorities of a municipality shall reduce the ad valorem taxes levied by the municipality in an amount equal to one-half (½) of the municipality's share of the revenue derived from the oil and gas severance tax under

Sections 27-25-505 and 27-25-705 as a result of offshore drilling on the Mississippi Gulf Coast.

SOURCES: Laws, 2004, ch. 482, § 6, eff from and after July 1, 2004.

CHAPTER 31

Ad Valorem Taxes—General Exemptions

In General 27-31-1
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§ 27-31-1. Exempt property.

The following shall be exempt from taxation:

(a) All cemeteries used exclusively for burial purposes.

(b) All property, real or personal, belonging to the State of Mississippi or any of its political subdivisions, except property of a municipality not being used for a proper municipal purpose and located outside the county or counties in which such municipality is located. A proper municipal purpose within the meaning of this section shall be any authorized governmental or corporate function of a municipality.

(c) All property, real or personal, owned by units of the Mississippi National Guard, or title to which is vested in trustees for the benefit of any unit of the Mississippi National Guard; provided such property is used exclusively for such unit, or for public purposes, and not-for-profit.

(d) All property, real or personal, belonging to any religious society, or ecclesiastical body, or any congregation thereof, or to any charitable society, or to any historical or patriotic association or society, or to any garden or pilgrimage club or association and used exclusively for such society or association and not for profit; not exceeding, however, the amount of land which such association or society may own as provided in Section 79-11-33. All property, real or personal, belonging to any rural waterworks system or rural sewage disposal system incorporated under the provisions of Section 79-11-1. All property, real or personal, belonging to any college or institution for the education of youths, used directly and exclusively for such purposes, provided that no such college or institution for the education of youths shall have exempt from taxation more than six hundred forty (640) acres of land; provided, however, this exemption shall not apply to commercial schools and colleges or trade institutions or schools where the profits of same inure to individuals, associations or corporations. All property, real or personal, belonging to an individual, institution or corporation and used for the operation of a grammar school, junior high school, high school or military school. All property, real or personal, owned and occupied by a fraternal and benevolent organization, when used by such organization, and from which no rentals or other profits accrue to the organization, but any part rented or from which revenue is received shall be taxed.

(e) All property, real or personal, held and occupied by trustees of public schools, and school lands of the respective townships for the use of public schools, and all property kept in storage for the convenience and benefit of the State of Mississippi in warehouses owned or leased by the State of Mississippi, wherein said property is to be sold by the Alcoholic Beverage Control Division of the Department of Revenue of the State of Mississippi.

(f) All property, real or personal, whether belonging to religious or charitable or benevolent organizations, which is used for hospital purposes, and nurses' homes where a part thereof, and which maintain one or more charity wards that are for charity patients, and where all the income from said hospitals and nurses' homes is used entirely for the purposes thereof and no part of the same for profit.

(g) The wearing apparel of every person; and also jewelry and watches kept by the owner for personal use to the extent of One Hundred Dollars ($100.00) in value for each owner.

(h) Provisions on hand for family consumption.

(i) All farm products grown in this state for a period of two (2) years after they are harvested, when in the possession of or the title to which is in the producer, except the tax of one-fifth of one percent (⅕ of 1%) per pound on lint cotton now levied by the Board of Commissioners of the Mississippi Levee District; and lint cotton for five (5) years, and cottonseed, soybeans, oats, rice and wheat for one (1) year regardless of ownership.

(j) All guns and pistols kept by the owner for private use.

(k) All poultry in the hands of the producer.

(*l*) Household furniture, including all articles kept in the home by the owner for his own personal or family use; but this shall not apply to hotels, rooming houses or rented or leased apartments.

(m) All cattle and oxen.

(n) All sheep, goats and hogs.

(o) All horses, mules and asses.

(p) Farming tools, implements and machinery, when used exclusively in the cultivation or harvesting of crops or timber.

(q) All property of agricultural and mechanical associations and fairs used for promoting their objects, and where no part of the proceeds is used for profit.

(r) The libraries of all persons.

(s) All pictures and works of art, not kept for or offered for sale as merchandise.

(t) The tools of any mechanic necessary for carrying on his trade.

(u) All state, county, municipal, levee, drainage and all school bonds or other governmental obligations, and all bonds and/or evidences of debts issued by any church or church organization in this state, and all notes and evidences of indebtedness which bear a rate of interest not greater than the maximum rate per annum applicable under the law; and all money loaned at a rate of interest not exceeding the maximum rate per annum applicable under the law; and all stock in or bonds of foreign corporations or associations shall be exempt from all ad valorem taxes.

(v) All lands and other property situated or located between the Mississippi River and the levee shall be exempt from the payment of any and all road taxes levied or assessed under any road laws of this state.

(w) Any and all money on deposit in either national banks, state banks or trust companies, on open account, savings account or time deposit.

(x) All wagons, carts, drays, carriages and other horse-drawn vehicles, kept for the use of the owner.

(y)(i) Boats, seines and fishing equipment used in fishing and shrimping operations and in the taking or catching of oysters.

(ii) All towboats, tugboats and barges documented under the laws of the United States, except watercraft of every kind and character used in connection with gaming operations.

(z)(i) All materials used in the construction and/or conversion of vessels in this state;

(ii) Vessels while under construction and/or conversion;

(iii) Vessels while in the possession of the manufacturer, builder or converter, for a period of twelve (12) months after completion of construction and/or conversion; however, the twelve-month limitation shall not apply to:

1. Vessels used for the exploration for, or production of, oil, gas and other minerals offshore outside the boundaries of this state; or

2. Vessels that were used for the exploration for, or production of, oil, gas and other minerals that are converted to a new service for use outside the boundaries of this state;

(iv)1. In order for a vessel described in subparagraph (iii) of this paragraph (z) to be exempt for a period of more than twelve (12) months, the vessel must:

a. Be operating or operable, generating or capable of generating its own power or connected to some other power source, and not removed from the service or use for which manufactured or to which converted; and

b. The manufacturer, builder, converter or other entity possessing the vessel must be in compliance with any lease or other agreement with any applicable port authority or other entity regarding the vessel and in compliance with all applicable tax laws of this state and applicable federal tax laws.

2. A vessel exempt from taxation under subparagraph (iii) of this paragraph (z) may not be exempt for a period of more than three (3) years unless the board of supervisors of the county and/or governing authorities of the municipality, as the case may be, in which the vessel would otherwise be taxable adopts a resolution or ordinance authorizing the extension of the exemption and setting a maximum period for the exemption.

(v) As used in this paragraph (z), the term "vessel" includes ships, offshore drilling equipment, dry docks, boats and barges, except watercraft of every kind and character used in connection with gaming operations.

(aa) Sixty-six and two-thirds percent (66-⅔%) of nuclear fuel and reprocessed, recycled or residual nuclear fuel by-products, fissionable or otherwise, used or to be used in generation of electricity by persons defined as public utilities in Section 77-3-3.

(bb) All growing nursery stock.

(cc) A semitrailer used in interstate commerce.

(dd) All property, real or personal, used exclusively for the housing of and provision of services to elderly persons, disabled persons, mentally impaired persons or as a nursing home, which is owned, operated and managed by a not-for-profit corporation, qualified under Section 501(c)(3) of the Internal Revenue Code, whose membership or governing body is appointed or confirmed by a religious society or ecclesiastical body or any congregation thereof.

(ee) All vessels while in the hands of bona fide dealers as merchandise and which are not being operated upon the waters of this state shall be exempt from ad valorem taxes. As used in this paragraph, the terms “vessel” and “waters of this state” shall have the meaning ascribed to such terms in Section 59-21-3.

(ff) All property, real or personal, owned by a nonprofit organization that: (i) is qualified as tax exempt under Section 501(c)(4) of the Internal Revenue Code of 1986, as amended; (ii) assists in the implementation of the national contingency plan or area contingency plan, and which is created in response to the requirements of Title IV, Subtitle B of the Oil Pollution Act of 1990, Public Law 101-380; (iii) engages primarily in programs to contain, clean up and otherwise mitigate spills of oil or other substances occurring in the United States coastal or tidal waters; and (iv) is used for the purposes of the organization.

(gg) If a municipality changes its boundaries so as to include within the boundaries of such municipality the project site of any project as defined in Section 57-75-5(f)(iv)1, Section 57-75-5(f)(xxi) or Section 57-75-5(f)(xxviii) or Section 57-75-5(f)(xxix), all real and personal property located on the project site within the boundaries of such municipality that is owned by a business enterprise operating such project, shall be exempt from ad valorem taxation for a period of time not to exceed thirty (30) years upon receiving approval for such exemption by the Mississippi Major Economic Impact Authority. The provisions of this paragraph shall not be construed to authorize a breach of any agreement entered into pursuant to Section 21-1-59.

(hh) All leases, lease contracts or lease agreements (including, but not limited to, subleases, sublease contracts and sublease agreements), and leaseholds or leasehold interests (including, but not limited to, subleaseholds and subleasehold interests), of or with respect to any and all property (real, personal or mixed) constituting all or any part of a facility for the manufacture, production, generation, transmission and/or distribution of electricity, and any real property related thereto, shall be exempt from ad valorem taxation during the period as the United States is both the title owner of the property and a sublessee of or with respect to the property; however, the exemption authorized by this paragraph (hh) shall not apply to any entity to whom the United States sub-subleases its interest in the property nor to any entity to whom the United States assigns its sublease interest in the property. As used in this paragraph, the term “United States” includes an agency or instrumentality of the United States of America. This paragraph (hh) shall apply to all assessments for ad valorem taxation for the 2003 calendar year and each calendar year thereafter.

(ii) All property, real, personal or mixed, including fixtures and leaseholds, used by Mississippi nonprofit entities qualified, on or before January 1, 2005, under Section 501(c)(3) of the Internal Revenue Code to provide support and operate technology incubators for research and development startup companies, telecommunication startup companies and/or other technology startup companies, utilizing technology spun-off from research and development activities of the public colleges and universities of this state, State of Mississippi governmental research or development activities resulting therefrom located within the State of Mississippi.

(jj) All property, real, personal or mixed, including fixtures and leaseholds, of startup companies (as described in paragraph (ii) of this section) for the period of time, not to exceed five (5) years, that the startup company remains a tenant of a technology incubator (as described in paragraph (ii) of this section).

(kk) All leases, lease contracts or lease agreements (including, but not limited to, subleases, sublease contracts and sublease agreements), and leaseholds or leasehold interests, of or with respect to any and all property (real, personal or mixed) constituting all or any part of an auxiliary facility, and any real property related thereto, constructed or renovated pursuant to Section 37-101-41, Mississippi Code of 1972.

(*ll*) Equipment brought into the state temporarily for use during a disaster response period as provided in Sections 27-113-1 through 27-113-9 and subsequently removed from the state on or before the end of the disaster response period as defined in Section 27-113-5.

(mm) For any lease or contractual arrangement to which the Department of Finance and Administration and a nonprofit corporation are a party to as provided in Section 39-25-1(5), the nonprofit corporation shall, along with the possessory and leasehold interests and/or real and personal property of the corporation, be exempt from all ad valorem taxation, including, but not limited to, school, city and county ad valorem taxes, for the term or period of time stated in the lease or contractual arrangement.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 2 (1); 1857, ch. 3, art. 11; 1871, § 1662; 1880, § 468; 1892, § 3744; 1906, § 4251; Hemingway's 1917, § 6878; 1930, § 3108; 1942, § 9697; Laws, 1928, ch. 185; Laws, 1932, chs. 137, 289; Laws, 1934, ch. 157; Laws, 1935, ch. 23; Laws, 1938, ch. 128; Laws, 1946, ch. 234, § 1; Laws, 1952, ch. 424; Laws, 1954, ch. 384; Laws, 1958, ch. 564; Laws, 1960, chs. 464, 465; Laws, 1966, ch. 639, § 1; Laws, 1968, ch. 582, § 1; Laws, 1971, ch. 412, § 1; Laws, 1972, ch. 448, § 1; Laws, 1978, ch. 410, § 4; Laws, 1980, ch. 479; Laws, 1984, ch. 456, § 1; Laws, 1986, ch. 403, § 1; Laws, 1988, ch. 506, § 2; Laws, 1990, ch. 463, § 1; Laws, 1992, ch. 418, § 1; Laws, 1993, ch. 604, § 1; Laws, 1998, ch. 469, § 1; Laws, 1999, ch. 450, § 1; Laws, 2000, 3rd Ex Sess, ch. 1, § 23; Laws, 2003, ch. 476, § 1; Laws, 2004, ch. 494, § 1; Laws, 2007, ch. 303, § 8; Laws, 2009, ch. 565, § 4; Laws, 2013, 1st Ex Sess, ch. 1, § 14; Laws, 2015, ch. 420, § 11; Laws, 2016, 1st Ex Sess, ch. 1, § 12; Laws, 2017, ch. 361, § 2; Laws, 2017, ch. 413, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note — Section 2 of Chapter 361, Laws of 2017, effective from and after passage (approved March 20, 2017), amended this section. Section 1 of Chapter 413, Laws of 2017, effective from and after July 1, 2017 (approved April 6, 2017), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision, and Publication of Legislation authority to integrate amendments so that all versions of the same code section amended within the same legislative session may become effective. The Joint Committee on Compilation, Revision, and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the August 15, 2017, meeting of the Committee.

Editor's Note — Section 79-11-1 referred to in (d) was repealed by Laws of 1987, ch. 485, § 153, eff from and after January 1, 1988. For current provisions regarding nonprofit corporations, see § 79-11-101 et seq.

Laws of 1986, ch. 403, § 2, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1990, ch. 463, § 2, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such law."

Laws of 1992, ch. 418, § 2, effective from and after July 1, 1992, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1993, ch. 604, § 4, effective October 1, 1993, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Amendment Notes — The 2016 1st Extraordinary Session amendment, in (gg), inserted "Section" preceding "57-75-5(f)(xxviii)" and "or Section 57-75-5(f)(xxix)" thereafter.

The first 2017 amendment (ch. 361), effective March 20, 2017, added (mm).

The second 2017 amendment (ch. 413), rewrote (z), which read: "All materials used in the construction and/or conversion of vessels in this state; vessels while under construction and/or conversion; vessels while in the possession of the manufacturer, builder or converter, for a period of twelve (12) months after completion of construction and/or conversion, and as used herein the term 'vessel' shall include ships, offshore drilling equipment, dry docks, boats and barges, except watercraft of every kind and character used in connection with gaming operations"; and made a minor stylistic change.

Cross References — Exemption of land acquired by United States, see § 3-5-7.

Tax exemption for property of county or regional railroad authorities, see § 19-29-39.

Exemption of leasehold interests in any personal or real property owned by state of Mississippi, counties, districts, municipalities, or political subdivisions from retroactive assessment of ad valorem tax due to omission in prior years, see §§ 21-33-55, 27-35-155.

Land acquired by municipality at tax sales, see §§ 21-33-71, 21-33-73, 21-33-75.

Exemption of property constructed, renovated, or improved in the central business district, see § 21-33-91.

State Tax Commission as meaning the Department of Revenue, see § 27-3-4.

Severance tax exemptions from ad valorem taxes, see § 27-25-27 (timber and timber products); § 27-25-307 (salt); § 27-25-523 (oil severed or produced in state); § 27-25-721 (natural gas).

Exemption of public library and school buildings, see § 27-31-21.

Exemption of equipment used to facilitate transportation of carbon dioxide in connection with enhanced oil recovery projects, see § 27-31-102.

Homestead exemption, see § 27-33-1 et seq.

Homestead exemption for property of a fraternal or benevolent organization, see §§ 27-33-17, 27-33-19.

Exemption from tax on corporations and joint stock companies, see § 27-35-31.

Exemptions under the motor vehicle ad valorem tax law, see § 27-51-41.

Exemptions under mobile homes ad valorem tax law, see § 27-53-27.

Exemption of university lands, see § 37-115-3.

Exemption of housing authorities property, see § 43-33-37.

Exemption of district bonds for conservation of water resources, see §§ 51-9-157, 51-15-155.

Exemption of drainage district bonds, see § 51-31-113.

Exemption of state ports and harbors bonds, see § 59-5-43.

Exemption of airport property and income, see §§ 61-3-77, 61-5-43.

Exemption of employee trust plan funds, see § 71-1-43.

Exemption of small business investment company notes, etc., see § 79-7-5.

Exemption of agricultural products of co-operative associations, see § 79-19-53.

Exemption of farmers' and agricultural credit associations, see §§ 81-15-29, 81-17-25.

Exemption of nonprofit dental service corporations, see § 83-43-33.

Property exempt from execution or attachment, see § 85-3-1 et seq.

Federal Aspects — Organizations exempt from federal tax on corporations under Section 501(c)(3) of the Internal Revenue Code, see 26 USCS § 501(c)(3).

Organizations exempt from federal tax on corporations under Section 501(c)(4) of the Internal Revenue Code, see 26 USCS § 501(c)(4).

Oil Pollution Act of 1990 generally, see 33 USCS § 2701 et seq.

JUDICIAL DECISIONS

1. In general.
2. Construction, generally.
3. Burden of proof.
4. Property of United States, state, or subdivisions thereof.
5. Specific exemptions.
6. —Cemeteries.
7. —Charitable institutions.
8. —Religious institutions.
9. —Educational institutions.
10. —Hospitals.
11. —Loans.

1. In general.

Section 27-35-35 and § 27-35-37 are not unconstitutionally vague and ambiguous in that they fail to set forth a specific formula for valuation of branch bank intangibles. Any vagueness or ambiguity in § 27-35-35 and § 27-35-37 when read in isolation is cured by reading them in pari materia with other statutes dealing with the same or similar subjects, especially § 27-13-13. Additionally, § 27-35-35 is not unconstitutional on the ground that it fails to allow deduction from taxable capital (i.e., net worth) those amounts invested in tax exempt government securities since government obligations are expressly exempted from ad valorem taxation by § 27-31-1(u). It is clear that § 27-31-1(u) is to be read in pari materia with all taxation statutes and nothing in § 27-35-35 implies that the general exemptions of § 27-31-1 are inapplicable to banks. Calhoun County Bd. of Supvrs. v. Grenada Bank, 543 So. 2d 138 (Miss. 1988).

Parents of black school children have standing to challenge the constitutionality of § 27-31-1(d) insofar as it is applied to grant state, county, or municipal sales of property tax exemptions to any private school in Mississippi which engages in racial discrimination in admissions policies for students and employment of faculty and staff, notwithstanding that plaintiffs failed to allege that any private racially desegregated school within the state will cease to operate if it is denied exemptions from the taxes under attack. Moton v. Lambert, 508 F. Supp. 367 (N.D. Miss. 1981).

This section [Code 1942, § 9697] designates what property shall be exempt from taxation, all property being taxable except that named. Teche Lines v. Board of Supvrs., 165 Miss. 594, 142 So. 24 (1932).

This section [Code 1942, § 9697] and subsequent sections declare the general policy of the state with regard to exemptions. All property within the territorial limits of the state shall be taxed except such as shall be specifically exempted. Barnes v. Jones, 139 Miss. 675, 103 So. 773, 43 A.L.R. 673 (1925).

A tax-collector, being merely a ministerial officer, cannot determine the constitutionality of a statute exempting a property owner from liability for taxes. Yazoo & Miss. V. Ry. v. West, 78 Miss. 789, 29 So. 475 (1901).

2. Construction, generally.

By exempting bonds authorized by the Agriculture and Industry Act and the income therefrom, the legislature must have intended to benefit the bondholders, not the county, since § 25-31-1(b) already exempted property of the State of Mississippi and its political subdivisions. Board of Supvrs. v. Hattiesburg Coca-Cola Bottling Co., 448 So. 2d 917 (Miss. 1984).

In determining whether a labor union was a benevolent organization, so as to exempt its building from ad valorem taxation, the Supreme Court was not bound by rulings of the Attorney General and the State Tax Commission categorizing labor unions as fraternal and benevolent organizations, or by the fact that the union was allowed certain federal tax exemptions. Local Union No. 845, United Rubber, Cork, Linoleum & Plastic Workers of Am., 369 So. 2d 497 (Miss. 1979).

While tax exemption statute must be strictly construed against the exemption and all reasonable doubts be resolved against it, and hospital has burden of showing right to the exemption, courts will not ascribe to legislature intention to be unfair and unjust and will not so interpret exemption statute as to cause unthought-of results. Board of Supvrs. v. Vicksburg Hosp., 173 Miss. 805, 163 So. 382 (1935).

The law exempting property will be strictly construed against the exemption and in construing the statute the rule ejusdem generis applies. Currie-Finch Brick & Lumber Co. v. Miller, 123 Miss. 850, 86 So. 579 (1920).

But while as a general rule exemptions from taxation must be strictly construed, the legislature has the authority to relax such rule with reference to educational and religious institutions. Adams County v. Catholic Diocese, 110 Miss. 890, 71 So. 17 (1916).

3. Burden of proof.

One claiming exemption from taxation has the burden of showing that the claim comes clearly within exemption law, unaffected by other statutes which clearly render property subject to lien for drainage district assessment. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

Exemption from taxation is not presumed, but the burden of proof is on those who claim the exemption. Barnes v. Jones, 139 Miss. 675, 103 So. 773, 43 A.L.R. 673 (1925).

4. Property of United States, state, or subdivisions thereof.

A tax sale in 1933 of city owned property was void because of the statute which exempts from taxation all property belonging to municipal corporations. Richton Tie & Timber Co. v. McWilliams, 218 Miss. 355, 67 So. 2d 374 (1953).

Under this section [Code 1942, § 9697], no school is liable for the drainage district taxes sought to be imposed upon it, nor are the county or school lands liable merely because the same are benefited by drainage improvements. Sunflower County v. Moorhead Drainage Dist., 216 Miss. 190, 62 So. 2d 214 (1953).

The board of supervisors could, in their discretion, pay out of general county funds the assessment tax levied by drainage district on realty used as county farm and where they ruled against payment of taxes, the realty used could not be liable for the tax. Sunflower County v. Moorhead Drainage Dist., 216 Miss. 190, 62 So. 2d 214 (1953).

This section [Code 1942, § 9697] was never intended to abate an existing judgment lien as fixed by a final decree of chancery court against land subsequently purchased by state or one of its subdivisions. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

This section [Code 1942, § 9697], exempting from taxation property belonging to the state or to any county, levee board or municipal corporation thereof, was never intended to abate an existing judgment lien as fixed by final decree of the chancery court against land subsequently purchased by the state or one of its subdivisions. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

While drainage district assessments are a species of taxation and are taxation in the broad sense of the term, they are not taxes within the meaning of this section [Code 1942, § 9697]. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

A county, on becoming a voluntary purchaser of drainage district lands encumbered with a judgment lien for assessments, does not acquire such lands free of the lien despite the fact that the lands are to be used for the public purpose. Willis Creek Drainage Dist. v. Yazoo County, 209 Miss. 849, 48 So. 2d 498 (1950).

Attempted assessment of property owned by municipality on January 1, 1937 for state and county taxes for 1937 is void for reason that property was exempt from taxation and sale for unpaid taxes on third Monday of September 1938 is void sale. Tardo v. Sterling, 205 Miss. 439, 38 So. 2d 911 (1949), error overruled 205 Miss. 439, 39 So. 2d 504.

Where contracts for the construction of ships for the United States Maritime Commission stipulated that the title to all materials, equipment, supplies and all other property assembled at the contractor's plant or elsewhere for the purpose of being used for the construction of the vessels, as well as title to the vessels themselves, on account of which payments were made, should vest immediately in the commission, and that the contractor should pay all taxes lawfully assessed against the vessels, materials, supplies or equipment, the partially constructed vessels were not subject to the tax imposed by this statute [Code 1942, § 9697], since they were the property of the federal government. Craig v. Ingalls Shipbuilding Corp., 192 Miss. 254, 5 So. 2d 676 (1942).

Statute exempting property belonging to municipality includes lands acquired by enforcement of collection of municipal taxes. Alvis v. Hicks, 150 Miss. 306, 116 So. 612 (1928).

Where city purchased lands for city taxes in 1921 and 1922, and state purchased same lands for taxes in 1924, parties purchasing from state acquired no title. Alvis v. Hicks, 150 Miss. 306, 116 So. 612 (1928).

Lands conveyed to the state as swamp and overflowed lands from the federal government are not subject to taxation. Dees v. Kingman, 119 Miss. 199, 80 So. 528 (1918); Penick v. Floyd Willis Cotton Co., 119 Miss. 828, 81 So. 540 (1919).

If the lands of the county are exempt from taxation, they remain exempt though excised and added to another county. See Code 1880, § 468, and this section [Code 1942, § 9697]. Warren County v. Nall, 78 Miss. 726, 29 So. 755 (1901).

The property of a city is exempt. A sale thereof for taxes is void and that too though no objection be made by the city officers. City of Meridian v. Phillips, 65 Miss. 362, 4 So. 119 (1888).

5. Specific exemptions.

A labor union was not a benevolent organization, so as to exempt its building from ad valorem taxation, even though it participated to some extent in charitable causes, where its primary purpose was to negotiate and obtain for its members higher wages, fringe benefits, and better working conditions. Local Union No. 845, United Rubber, Cork, Linoleum & Plastic Workers of Am., 369 So. 2d 497 (Miss. 1979).

Rent from property owned by a Masonic lodge applied to the payment of the balance of the purchase price on the property is not being applied for fraternal and benevolent purposes. Senter v. City of Tupelo, 136 Miss. 269, 101 So. 372 (1924).

A printing press owned by a practical printer, editor and publisher of a newspaper and necessary to carry on his trade or business as such, is not exempt. Frantz v. Dobson, 64 Miss. 631, 2 So. 75, 60 Am. R. 68 (1887).

Under the United States statutes, Loan and Currency Acts 1862, 1863, legal tender United States notes are exempt from state taxation, and so are national bank notes issued under Acts of Cong. February 25, 1863, and March 3, 1863. Horne v. Green, 52 Miss. 452 (1876).

6. —Cemeteries.

An acreage acquired by a cemetery corporation and platted for burial purposes, but in which only four or five persons were interred before the property was allowed to go to weeds and then rented for farming purposes, was not exempt from taxes assessed beginning with the year in which the property was so rented, except as to lots in which persons were actually buried. Evans v. City of Jackson, 201 Miss. 14, 28 So. 2d 249 (1946).

7. —Charitable institutions.

A nonprofit corporation's low income apartment complex for elderly, handicapped, and disabled persons was not a "charitable society" exempted from taxes pursuant to § 27-31-1(d), where the corporation received fair market rent from all tenants and used the rent revenues to pay mortgage payments. Better Living Servs., Inc. v. Bolivar County, 587 So. 2d 914 (Miss. 1991).

Uncultivated land owned by charitable organization, from which a few loads of wood only were taken, held not exempt from taxation. Smith v. Myatt, 146 Miss. 388, 111 So. 590 (1927).

A social club for the diversion of members and persons connected with religious or charitable societies is held not to be exempt from taxation. New Std. Club v. McRaven, 111 Miss. 92, 71 So. 289, Am. Ann. Cas. 1918E,191 (1916).

Property belonging to a charitable society if leased for profit, is taxable under this section [Code 1942, § 9697]. Ridgely

Lodge, No. 23, I.O.O.F. v. Redus, 78 Miss. 352, 29 So. 163 (1901).

Use of the income of the property for charity does not warrant exemption. Ridgely Lodge, No. 23, I.O.O.F. v. Redus, 78 Miss. 352, 29 So. 163 (1901).

8. —Religious institutions.

Church property not being absolutely exempt from taxation, injunction was not proper method to determine exemption. North Am. Old Roman Catholic Diocese v. Havens, 164 Miss. 119, 144 So. 473, 84 A.L.R. 1313 (1932).

Since church property was subject to taxation unless it was being used for religious or charitable purposes, the owner of the property was required to appear at meeting of board of supervisors fixed by law in which notice was given by publication that the board would hear objections to assessments, and if at such meeting property was assessed for taxation, appeal should be taken to circuit court where the case might be tried de novo. North Am. Old Roman Catholic Diocese v. Havens, 164 Miss. 119, 144 So. 473, 84 A.L.R. 1313 (1932).

Unused church lot held not exempt from taxation. Enochs v. City of Jackson, 144 Miss. 360, 109 So. 864 (1926).

Personal property of a religious society which is devoted primarily to the use of gain and reinvestment is not exempt from taxes. Gunter v. City of Jackson, 130 Miss. 637, 94 So. 844 (1923).

Property which a religious society has no right to own is not exempt from taxation. Central Methodist Church v. City of Meridian, 126 Miss. 780, 89 So. 650 (1921).

Lands purchased by a church for religious purposes after a lien for the taxes of the then current year has attached, is acquired subject to, and not exempt from, such lien and a sale thereof for such taxes will be valid. McHenry Baptist Church v. McNeal, 86 Miss. 22, 38 So. 195 (1905).

9. —Educational institutions.

Attempted back assessment of taxes against tract of land owned by college, not in excess of maximum limitation, located about one-fourth of a mile from the campus and used for trucking purposes, as well as for growing corn and hay for the horses owned and used by the college, was void, since such tract was exempt from taxation. City of Jackson v. Belhaven College, 195 Miss. 734, 15 So. 2d 621 (1943).

Religious society's land used in connection with college held not taxable merely because platted and subdivided into lots for future sale. Chandler v. Executive Comm. on Educ., 165 Miss. 690, 146 So. 597 (1933).

A grant of specific exemption of land to a college negatives an intention on the part of the legislature to include land of a different character, which is held by the college as a part of its endowment. Millsaps College v. City of Jackson, 275 U.S. 129, 48 S. Ct. 94, 72 L. Ed. 196 (1927).

But property of an incorporated educational institution for the education of youth exclusively is exempt from taxation whether the institution is operated for private profit or otherwise. Board of Supvrs. v. Gulf Coast Military Academy, 126 Miss. 729, 89 So. 617 (1921).

10. —Hospitals.

Although no particular beds or wards in a hospital were separately set aside, designated, and maintained for the use of charity patients, the property of the hospital was exempt from taxation, where it appeared that within the hospital one or more wards, or the equivalent thereof, as well as the services of the staff physician, were at all times available to charity patients, that both in number and in point of time more than enough patients to satisfy the statutory requirements were received and treated without any preliminary inquiry whether they were or were not able to pay, and were continued to be cared for even though it was ascertained that they were unable to pay, that none were turned away or were turned out, and that nurses and other servitors in the hospital were not permitted to know who were paying patients and who were being cared for and treated without pay. City of Natchez v. Natchez Sanatorium Benevolent Ass'n, 191 Miss. 91, 2 So. 2d 798 (1941).

The legislature, in providing for the exemption for hospital set out herein, intended to encourage treatment and hospitalization of those needing such assistance, but who were unable to pay for it.

Rush Hosp. Benevolent Ass'n v. Board of Supvrs., 187 Miss. 204, 192 So. 829 (1940).

Where it appeared that a hospital maintained one or more charity wards, that all charges and expenses connected with the management of the hospital were shown to be reasonable, that the income thereof was used in operating the hospital and that the hospital had operated at a deficit, and it declared itself to be a nonprofit organization, the hospital came within the requirement set forth in this act and was entitled to the exemption. Rush Hosp. Benevolent Ass'n v. Board of Supvrs., 187 Miss. 204, 192 So. 829 (1940).

As regards exemption from taxation, what may be suitable compensation for services rendered by the hospital is primarily for the decision of the corporation; and if it is within the limit, as to which reasonable men might differ reasonably, the judgment of the hospital authorities should not be overturned; that should it be manifest that compensation for services was unreasonable, and the proof sustained that theory, then the judgment of the hospital authorities would not be controlling, but only persuasive. Rush Hosp. Benevolent Ass'n v. Board of Supvrs., 187 Miss. 204, 192 So. 829 (1940).

Under statute exempting from taxation all property belonging to religious, charitable, or benevolent organizations used for hospital purposes, and which hospital maintains one or more charity wards, and where all income is used entirely for hospital purposes, a hospital claiming exemption may be operated for profit in that its income may exceed its expenses, provided all of income is devoted to hospital purposes. Board of Supvrs. v. Jackson Hosp. Benevolent Ass'n, 180 Miss. 129, 177 So. 27 (1937).

A hospital which was operated primarily for care of patients who paid therefor, and wherein care of charity patients was neither sought nor encouraged, was exempt from taxation, as against contention that hospital was operated for profit, where income of hospital other than that allocated to current expenses was being used to liquidate bona fide debt incurred by hospital in purchase of its property. Board of Supvrs. v. Jackson Hosp. Benevolent Ass'n, 180 Miss. 129, 177 So. 27 (1937).

Statutory subsection exempting from taxation all property, real or personal, "whether belonging to religious or charitable or benevolent organizations," which is used for hospital purposes under conditions described in the subsection held to exempt from taxation property of hospitals therein described, though not belonging to religious, charitable, or benevolent organizations, the word "whether" not being intended as a videlicet, but merely to show that property of such organizations owning such hospitals was also exempt. Board of Supvrs. v. Vicksburg Hosp., 173 Miss. 805, 163 So. 382 (1935).

Where hospital had two charity wards and services of its physicians were furnished without charge and hospital was not a profit-making institution, hospital held exempt from taxation, though several physicians who were principal owners of the stock had their offices therein and with other physicians constituted themselves a clinic, using the hospital's facilities and dividing profits among themselves, where the services of the physicians rendered to hospital were worth more than benefits granted the physicians. Board of Supvrs. v. Vicksburg Hosp., 173 Miss. 805, 163 So. 382 (1935).

Where there was no separation of nurses' home from hospital or demand separately to assess the nurses' home on part of board of supervisors of county and matter was not raised in lower court, supreme court, finding that hospital was exempt from taxation, could not separately assess the nurses' home. Board of Supvrs. v. Vicksburg Hosp., 173 Miss. 805, 163 So. 382 (1935).

But under Code 1906, §§ 4251, 4252 (Code 1942, §§ 9697, 9710), property used as a home for nurses was not exempt from taxation, although the nurses were instructed therein with reference to treatment of patients. Johnson v. Mississippi Baptist Hosp., 140 Miss. 485, 106 So. 1 (1925).

11. —Loans.

The legislature in granting the exemption under these sections contemplated not in the accountant's conception of the effective rate of interest or interest yield, but the usual sense of the term, the interest which is charged and agreed to by the parties for the period of the loan. Bailey v. North Am. Fin. Co., 212 Miss. 97, 54 So. 2d 227 (1951).

Where a finance company charges interest on the money loaned at the rate of 5 per cent per annum for the entire period of the loan and then aggregates the principal and interest and divides the total into monthly installments, even though the interest yield which the finance company receives for the use of its money is in most instances more than 6 per cent, the loans did not have the rate of interest exceeding 6 per cent and those notes held by the company on such loans were not subject to ad valorem taxes. Bailey v. North Am. Fin. Co., 212 Miss. 97, 54 So. 2d 227 (1951).

Statute (Code 1942, § 37), providing for forfeiture of all interest and recovery of that paid where notes or evidence of indebtedness stipulate a rate of interest not greater than 6 per cent per annum after date or after maturity, but interest in excess of that per cent is in fact charged, was enacted to prevent evasion of subdivision (v) of this section [Code 1942, § 9697], exempting from taxation notes and loans made at a rate of interest not greater than 6 per cent per annum. Johnson v. Carter, 203 Miss. 38, 33 So. 2d 296 (1948).

Money loaned pursuant to arrangement between lender and brokerage company whereby interest in excess of six per cent was received by means of exaction of commission by brokerage company for investigation purposes, held subject to tax, in that arrangement was mere subterfuge for purpose of evading taxes. Gully v. Gulf Coast Indus. Loan Co., 168 Miss. 768, 151 So. 754 (1934).

Loans made by foreign corporation consummated upon approval by corporation's New York office and traveling auditor's financial report, and evidenced by note kept with collateral in New York office and payable there, held not to have such local "business situs" as to subject them to local taxation. Gulley v. C.I.T. Corp., 168 Miss. 268, 150 So. 367 (1933).

Where lender delivered to borrower $95, taking note for $100 due ten months after date, loan held not exempt from taxation. Industrial Loan & Inv. Co. v. Adams County, 163 Miss. 654, 141 So. 756 (1932).

ATTORNEY GENERAL OPINIONS

Controlling factors in determining what constitutes being "in the hands of the producer" are ownership and control; poultry being processed for owner who retained ownership and control over same would be exempt from ad valorem taxation. Lee, Feb. 16, 1990, A.G. Op. #90-0105.

When a county or other political subdivision of the state, such as a state supported university, acquires real property which is thereafter leased to another political subdivision of the state for a monthly rental so as to be deemed income producing property, both the real estate and the leasehold interest in the real estate are exempt from taxation. Griffith, May 13, 1992, A.G. Op. #92-0319.

Ad valorem taxes on fleet of vehicles with out-of-state tags are owed to this state if vehicles have their situs in this state, regardless of payment of privilege taxes through compact. Gamble, July 2, 1992, A.G. Op. #92-0424.

Amendments to section made by HB 935 do not apply retroactively to taxes having effective lien date before July 1, 1992. Montgomery, July 29, 1992, A.G. Op. #92-0542.

Transfer of ownership of fee and/or existence of new lease are factors which may be considered in determining whether enterprise is new for purposes of discretionary ad valorem tax exemption, but question is nature of business; governing authorities may grant exemption to new enterprise even though same property received exemption for full ten year period as different business. Donald, August 12, 1992, A.G. Op. #92-0514.

Domesticated fish are included in ad valorem tax exemption for farm products. Hunt, Oct. 28, 1992, A.G. Op. #92-0799.

If private person owned real property as of January 1st, such person would be liable for full amount of that year's taxes, even though lien against property was extinguished when property was acquired by public body or school district, pursuant to Miss. Code Section 27-31-1. Eaton, Apr. 14, 1993, A.G. Op. #93-0215.

Property of non-profit medical center is not exempt from taxes solely because it is owned by non-profit corporation. Blackledge, Feb. 16, 1994, A.G. Op. #93-0715.

Real property exempt from taxation by virtue of government ownership was also exempt from forest acreage tax. Bennett, Feb. 24, 1994, A.G. Op. #94-0060.

Medical building operated for profit and owned by not for profit hospital is not entitled to tax exempt status pursuant to Section 27-31-1(f). Bailey, March 2, 1994, A.G. Op. #94-0081.

Land that is struck off to the municipality at a municipal tax sale should not be advertised for sale and sold for delinquent taxes at a tax sales. The land becomes property of the city when it is struck off to the city and is therefore exempt from municipal taxes. Navarro, August 23, 1995, A.G. Op. #95-0554.

Section 27-31-1(p) applied to such farming tools, implements and machinery actually leased and actually being used exclusively in the cultivation or harvesting of crops. Therefore, the fact that the farming equipment is leased will have no bearing on whether it is entitled to an exemption pursuant to Section 27-31-1(p). Griffith, February 7, 1996, A.G. Op. #96-0021.

If the County Water Association, Inc. is properly incorporated under the nonprofit statutory provisions, it is exempt from ad valorem taxation pursuant to Section 27-31-1(d). Jones, October 4, 1996, A.G. Op. #96-0502.

The ownership interests of the City of Louisville in an industrial building leased to a private industry are exempt from ad valorem taxation pursuant to subsection (b) of this section if such ownership is being used for a proper municipal purpose. Tucker, January 15, 1999, A.G. Op. #99-0002.

The ownership interests of Winston County in a medical facility property leased to a charitable non-profit organization are exempt from ad valorem taxation pursuant to subsection (b) of this section if such ownership is being used for a proper municipal purpose. Tucker, January 15, 1999, A.G. Op. #99-0002.

The receipt of a Section 501(c)(3) tax exemption alone does not qualify an entity to be exempt from ad valorem taxation. McWilliams, Dec. 28, 1999, A.G. Op. #99-0687.

A scoreboard, which was under a lease-purchase contract for acquisition by a state university, the revenues received by the university and the lease-purchase payments were exempt from all Mississippi sales, use, and ad valorem; however, revenues received by the corporation that owned the scoreboard pursuant to the sale of scoreboard advertising by the corporation were not exempt from sales taxes. Brown, Mar. 2, 2001, A.G. Op. #01-0099.

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The tax sale of property owner by a city within its boundaries in a county, on which property a cellular telephone company had erected a tower for which it paid the city rent, was void under the statute. Hembree, Jan. 25, 2002, A.G. Op. #01-0795.

While a county board of supervisors has ample authority in the law to examine property listed on the tax rolls as tax exempt and to ask for information from the property owner in order to determine the correctness of the exemption, there is no authority under the home rule statute for the county to monitor hospitals for compliance with § 27-31-1(f). Haque, Feb. 22, 2002, A.G. Op. #02-0039.

Town's correctional facility property, which is subject to a management agreement with a corporation, is exempt from ad valorem taxes pursuant to § 27-31-1(b). Webb, Sept. 6, 2002, A.G. Op. #02-0373.

No authority can be found for the governing authorities of a municipality to grant a tax exemption on real or personal property of a nonprofit corporation which operates a golf club, such as the Bear Creek Golf Club, Inc. Vincent, Aug. 15, 2003, A.G. Op. 03-0406.

Property owned by Northeast Mississippi Planning & Development District, a nonprofit 501(c)(3) corporation, is not exempt from ad valorem taxes. Permenter, Jan. 6, 2004, A.G. Op. 03-0639.

The county board of supervisors must determine, in accordance with fact and as recorded by an order entered on its minutes, whether a county museum is an historical association or society entitled to an exemption from ad valorem taxation. If the board finds that the museum meets the statutory requirements set out in subsection (d) of this section, then the property in question is properly exempt from ad valorem taxation. Dulaney, Feb. 13, 2004, A.G. Op. 04-0032.

No authority can be found under which a board of commissioners or the Governor may grant relief from ad valorem property taxes. Griffin, Mar. 12, 2004, A.G. Op. 04-0081.

The land and any buildings or other real or personal property on the site owned by the Farmers' Market, a division of the State of Mississippi's Department of Agriculture and Commerce, is exempt from ad valorem taxation. However, any improvements or personal property on the site which are not owned by the Farmers' Market, or which are otherwise not owned by the state, would be subject to ad valorem taxation. Allen, July 16, 2004, A.G. Op. 04-0298.

Whether an association that operates a general hospital is entitled to an exemption under subsection (d) of this section is a factual determination which must be made by the county board of supervisors. Welch, Aug. 6, 2004, A.G. Op. 04-0344.

Whether or not an exemption under Section 27-31-1(d) should be revoked is a factual determination which must be made by the county board of supervisors. Barry, June 26, 2006, A.G. Op. 06-0184.

No authority can be found under Mississippi law to exempt from ad valorem taxes office property owned by local Farm Bureau offices of the Mississippi Farm Bureau Federation. Gregory, Nov. 10, 2006, A.G. Op. 06-0558.

RESEARCH REFERENCES

ALR. Legislative power to exempt from taxation property, purposes, or uses additional to those specified in constitution. 61 A.L.R.2d 1031.

Exemption from taxation of college fraternity or sorority house. 66 A.L.R.2d 904.

Property used as dining rooms or restaurants as within tax exemptions extended to property of religious, educational, charitable, or hospital organizations. 72 A.L.R.2d 521.

Church parking lots as entitled to tax exemptions. 75 A.L.R.2d 1106.

Tax exemption of property used by fraternal or benevolent association for clubhouse or similar purposes. 39 A.L.R.3d 640.

Nursing homes as exempt from property taxation. 45 A.L.R.3d 610.

Validity of statute or ordinance giving property tax exemption or favorable property tax rate to older persons. 45 A.L.R.3d 1147.

Construction of statute or ordinance giving property tax exemption or favorable property tax rate to older persons. 45 A.L.R.3d 1153.

Taxation: Exemption of parsonage or residence of minister, priest, rabbi, or other church personnel. 55 A.L.R.3d 356.

Property tax: Exemption of property leased by and used for purposes of otherwise tax-exempt body. 55 A.L.R.3d 430.

Tax exemption of property of educational body as extending to property used by personnel as living quarters. 55 A.L.R.3d 485.

What are educational institutions or schools within state property tax exemption provisions. 34 A.L.R.4th 698.

Exemption of public golf courses from local property taxes. 41 A.L.R.4th 963.

Exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others. 61 A.L.R.4th 1105.

Nursing homes as exempt from property taxation. 34 A.L.R.5th 529.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 234 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 111 et seq. (exemptions from taxation).

Lawyers' Edition. Tax legislation as violating Federal Constitution's First Amendment — Supreme Court cases. 103 L. Ed. 2d 951.

Law Reviews. Historic Preservation of the Zoning Power: A Mississippi Perspective. 50 Miss. L. J. 533, September 1979.

1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December 1979.

§ 27-31-2. Property owned by not-for-profit foundation providing charitable contributions and funding for legal services to the poor and projects to improve administration of justice.

All real and personal property, except motor vehicles, owned by a not-for-profit foundation providing charitable contributions and funding for legal services to the poor, for projects to improve the administration of justice, for assistance to the trial and appellate courts and similar activities and purposes, shall be exempt from all ad valorem taxation. Such property shall be exempt from ad valorem taxation regardless of whether the foundation shares the property with any other organization or entity.

SOURCES: Laws, 2003, ch. 313, § 1, eff from and after Jan. 1, 2003.

Editor's Note — Laws of 2003, ch. 313, § 2, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-31-3. Turpentine, etc.; agricultural products.

Crude turpentine gum (oleoresin), the product of a living tree, or trees, of the pine species, and gum-spirits-of-turpentine and gum-rosin as processed therefrom, are hereby classified and declared to be agricultural commodities, agricultural products and farm products.

SOURCES: Codes, 1942, § 9698; Laws, 1934, ch. 301.

§ 27-31-5. Little theatre property.

All real and personal property, excepting motor vehicles, owned by incorporated or unincorporated little theatres which promote the dramatic arts and are created as or for a literary institution, a civic improvement society, or for fraternal and benevolent purposes, shall be and the same is hereby exempt from ad valorem taxation, both state, county and municipal; provided, however, that this section shall not apply to such little theatre organizations which are operated as profit-making institutions or organizations.

SOURCES: Codes, 1942, § 9697.5; Laws, 1956, ch. 426; Laws, 1978, ch. 514, § 2, eff from and after July 1, 1978.

Cross References — Exemptions from ad valorem tax on automobiles, see § 27-51-41.

RESEARCH REFERENCES

ALR. Exemption of nonprofit theater or concert hall from local property taxation. 42 A.L.R.4th 614.

§ 27-31-7. Certain manufactured products held for sale or shipment to other than final consumer.

(1) The board of supervisors of any county or the governing authority of any municipality is hereby authorized and empowered, in its discretion, to exempt from ad valorem taxation, excepting ad valorem taxes for school district purposes, all or any portion of the value of the products, including finished goods, owned by or remaining in the hands of any manufacturer, or its subsidiary, or any distributor or wholesale merchant, located within such county or municipality. The time of such exemption shall be for a period not to exceed a total of ten (10) years, which shall commence from the date such exemption is granted. Any request for an exemption must be made in writing to the board of supervisors or the municipal governing authority.

(2) The exemption granted herein shall be in addition to all other exemptions heretofore granted by the laws of the State of Mississippi.

(3) It is the sense of the Legislature that time limits imposed in Section 182, Mississippi Constitution of 1890, on the terms of certain ad valorem tax exemptions which may be granted to manufacturers and other new enterprises of public utility apply only to the physical plant of such manufacturers and enterprises and to any personal property necessary for the operation thereof; and any exemption for the finished products of such manufacturers and enterprises granted by the governing authorities of any county or municipality under this section after December 31, 1960, but prior to July 1, 1982, shall not be affected by the time limits established in subsequent amendments to this section after July 1, 1982, but shall remain in full force and effect subject to the original terms granted by such governing authorities.

SOURCES: Codes, 1942, § 9697.7; Laws, 1960, ch. 466, §§ 1-4; Laws, 1966, ch. 640, § 1; Laws, 1982, ch. 433; Laws, 1990, ch. 502, § 2; Laws, 1992, ch. 378, § 1; Laws, 1992, ch. 518, § 1; Laws, 1993, ch. 621, § 1, eff from and after July 1, 1993.

Editor's Note — Laws of 1992, ch. 378, § 2, effective from and after July 1, 1992, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1993, ch. 621, § 3, effective July 1, 1993, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

JUDICIAL DECISIONS

1. In general.

The exemption authorized by this section [Code 1942, § 9697.7] is applicable to products manufactured in Mississippi and not to products manufactured outside the state and merely stored in Mississippi. City of Jackson v. Schenley Affiliated Brands Corp., 240 So. 2d 451 (Miss. 1970).

An order denying a New York corporation an exemption from municipal ad valorem taxes on its products stored in a private warehouse in Mississippi was correct, where the products had been manufactured outside the state. City of Jackson v. Schenley Affiliated Brands Corp., 240 So. 2d 451 (Miss. 1970).

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An exemption granted pursuant to subsection (1) after the date of July 1, 1982, must be limited in time to 10 years, and would not be eligible for an extension beyond that initial 10-year period. McDonald, Jan. 28, 2000, A.G. Op. #2000-0005.

There is no authority that would empower a county board of supervisors or municipal governing body to grant an exemption from ad valorem taxes for the value of raw materials and work-in-progress inventories under the statute. McDonald, Feb. 25, 2000, A.G. Op. #2000-0080.

The statute, which provides for ad valorem tax exemptions for "all or any portion of the value of the products, including finished goods...." in the hands of manufacturers or subsidiaries, does not apply to "raw materials" or "works-in-progress." Patterson, March 31, 2000, A.G. Op. #2000-0160.

Governing authorities of a municipality which annexes an area which includes a warehouse for a manufacturer may grant an exemption from municipal ad valorem taxes for a period of up to ten years from the date of the annexation for finished goods in the warehouse. Fernald, Jan. 24, 2003, A.G. Op. #03-0025.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 263 et seq.

CJS. 84 C.J.S., Taxation § 328 et seq.

§ 27-31-9. Parking garages not operated for profit; exemption by counties.

The board of supervisors of any county having a population of more than forty-two thousand (42,000) according to the most recent federal census and in which there is now or may hereafter be situated a national military park and cemetery, may, in their discretion, exempt from all county ad valorem taxation, for a period of not more than ten (10) years, any parking garage providing motor vehicle parking service to the general public, provided the parking garage is operated solely for the purpose of promoting business and commerce for the benefit of the general public and provided further, that said parking garage shall be operated so that no part of the income therefrom inures to or to the benefit of any person, partnership, firm, association or corporation organized for profit.

SOURCES: Codes, 1942, § 9697.8; Laws, 1968, ch. 593, § 1, eff from and after passage (approved August 8, 1968).

§ 27-31-11. Parking garages not operated for profit; exemption by municipalities.

The governing authorities of any municipality located within any county as described in Section 27-31-9, may, in their discretion, exempt from all municipal ad valorem taxation, for a period of not more than ten (10) years, any parking garage providing motor vehicle parking service to the general public, provided the parking garage is operated solely for the purpose of promoting business and commerce for the benefit of the general public and provided further, that said parking garage shall be operated so that no part of the income therefrom inures to or to the benefit of any person, partnership, firm, association or corporation organized for profit.

SOURCES: Codes, 1942, § 9697.9; Laws, 1968, ch. 593, § 2, eff from and after passage (approved August 8, 1968).

§ 27-31-13. Commodities in transit.

All commodities, including everything movable that is of value usually bought and sold, which is in transit and assembled or in storage on wharfs, railway cars, or in warehouses, at ports of entry, designated by the U. S. government as such, in the State of Mississippi, intended for export or import into, through or from the State of Mississippi, shall be and all such commodities are exempt from all state, county and municipal taxation, including taxes levied and assessed by Section 27-65-19, Mississippi Code of 1972, on the transportation of freight thereof moving on intrastate rates therefrom; Provided, however, that the provisions of this section shall neither apply to, affect nor repeal any part of Chapter 116 of the Mississippi Code of 1930, the amendments thereof, or laws supplemental thereto, nor shall it authorize or permit the receipt into Mississippi, or storage within the state, or within the jurisdictional limits thereof, of any gasoline, kerosene, distillate, motor vehicle or internal combustion engine fuel, by whatever name called, except under the provisions of said Chapter 116, Code of Mississippi, 1930, or amendments or laws supplemental thereto, as therein set out.

It is the intent and purpose of this section to exempt from all state, county and municipal taxation, all commodities in transit, assembled and/or in storage, and/or in railway cars at any harbor or port designated by the U. S. government as a port of entry in the State of Mississippi, and thereby encourage interstate or intrastate and foreign commerce passing through the ports and harbors of the state, except as provided in the first paragraph hereof. All freight shipments of commercial fertilizers moving on intrastate rates within the state are hereby exempted from all taxes levied and assessed by Section 27-65-19, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 9699; Laws, 1938, Ex. ch. 80.

Cross References — Gasoline and motor fuel taxes, see § 27-55-1 et seq.
Regulation of commercial fertilizers, see § 75-47-1 et seq.
Regulation of gasoline and petroleum products, see § 75-55-1 et seq.
Regulation of liquefied petroleum gases, see § 75-57-1 et seq.

ATTORNEY GENERAL OPINIONS

Mobile drilling vessel, registered in foreign country and owned by corporation formed in another foreign country is exempt from local taxation where vessel has not been deployed and is not engaged in oil and gas exploration within United States or its territorial waters, and is in storage in Mississippi at port of entry under U.S. Customs regulations. Stennis, July 2, 1992, A.G. Op. #92-0515.

§ 27-31-15. Nonprofit cooperative electric power associations.

(1) The property of all nonprofit cooperative electric power associations organized heretofore or which may be hereafter organized under any of the laws of this state for the purpose of selling, transmitting, distributing or generating electricity, electric current or power, and which shall engage in any such business or businesses shall be exempt from ad valorem taxes, and such association shall be exempt from franchise, privilege, net income or other excise taxes imposed by the state or any of its political subdivisions. Provided, however, that this exemption shall not extend to or include exemptions from payment of gas taxes, motor vehicle privilege and motor vehicle ad valorem taxes, and sales and use taxes.

(2) This exemption shall apply to all property which may be used or useful in the transaction of any such business or businesses including, but not limited to, office buildings, warehouses, office equipment and supplies, maintenance,

operating and construction equipment, supplies and materials, and all electrical distribution and transmission lines and component parts thereof. Provided, however, that nothing contained in this section shall be construed so as to grant exemption from municipal ad valorem taxes or taxes levied for the benefit of the particular municipal school district on any real estate owned by such associations and located within the corporate limits of the municipality, nor construed so as to grant exemption from municipal ad valorem taxes on electrical transmission and distribution lines and component parts thereof owned by such associations which do not purchase the electricity which they sell in the municipality from any agency or instrumentality of the United States.

(3) In the event any such association shall engage in the sale of commodities, goods, wares or merchandise as a business, the foregoing exemption shall not apply to that part of the business so done.

(4) In the event any part of any office building owned by such an association shall be rented or subrented by any such association, such building shall not be exempt from ad valorem taxes, but may be assessed by the county tax assessor and board of supervisors of the county in which it is situated and by the taxing authorities of any municipality in which it may be situated.

SOURCES: Codes, 1942, § 9700; Laws, 1938, ch. 248; Laws, 1938, Ex. ch. 68; Laws, 1946, ch. 235, §§ 1-4; Laws, 1958, ch. 574, § 14; Laws, 1966, ch. 641, § 1; Laws, 1968, ch. 588, § 9; Laws, 1978, ch. 514, § 3, eff from and after July 1, 1978.

Cross References — Motor vehicle taxes, see § 27-19-1 et seq.
Exemptions from ad valorem taxes on automobiles, see § 27-51-41.
Gasoline and motor vehicle fuel taxes, see § 27-55-1 et seq.
Sales tax, see § 27-65-1 et seq.
Use tax, see § 27-67-1 et seq.

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 111 et seq. (exemptions from taxation).

CJS. 84 C.J.S., Taxation § 324.

§ 27-31-17. Bonds, etc., of agricultural agencies.

All stocks in, bonds of or other evidences of debt issued by any agricultural credit corporation or association, and all money loaned by any such organization for agricultural purposes are hereby exempted from all ad valorem taxes; provided, however, that the exemption from taxation on money loaned, as provided herein, shall not apply to money loaned at a rate of interest in excess of eight per cent per annum.

SOURCES: Codes, 1942, § 9701; Laws, 1932, ch. 305; Laws, 1958, ch. 565.

Cross References — Agricultural credit corporations, see § 81-15-1 et seq.
Farmers' credit associations, see § 81-17-1 et seq.

§ 27-31-19. Oil, gas and other petroleum products refined in state.

There shall be exempt from all ad valorem taxes now levied or hereafter levied by the State of Mississippi, or any county, municipality, levee district, school, or any other taxing district within the state, all oil, gas, and petroleum products, whether produced within or without the state, which oil, gas or petroleum products are owned by a person, firm, or corporation operating a refinery for the refining of oil, gas or petroleum products in the state, and either (1) are in transit to or situated at such a refinery for refining thereat; (2) are in the process of being refined at such a refinery; or (3) have been refined at such refinery and are still owned by or in the hands of the refiner. Such exemption shall also extend to such oil, gas and petroleum products owned by any corporation controlled by, under common control with, or controlling such a refiner; provided, however, that the exemption afforded by this section shall not extend to those finished petroleum products incident to regular, normal, and customary marketing operations held in marketing bulk plants or retail service stations.

SOURCES: Codes, 1942, § 9702.5; Laws, 1961, 2nd Ex. ch. 6, eff on passage (approved October 20, 1961).

Cross References — Ad valorem exemption of oil severed or produced within the state, see § 27-25-523.

Ad valorem exemption of gas produced or underground on producing properties within the state, see § 27-25-721.

Privilege tax on refiners and processors of gasoline, see § 27-55-11.

JUDICIAL DECISIONS

1. In general.

A plant which used petroleum products to produce aniline oil, a derivative of benzene, was a refinery within the meaning of the statute and its petroleum products were therefore exempt from taxation. City of Pascagoula v. First Chem. Corp., 388 So. 2d 160 (Miss. 1980).

§ 27-31-20. Certain electric generating facilities and integrated gasification process facilities.

(1) As used in this section, "project" means an electric generating facility constructed after April 6, 2009, that is used or will be used by a public utility, as defined in Section 77-3-3, and a gasification process facility that is integrated with such electric generating facility that converts Mississippi feedstock, including, but not limited to lignite, to a synthesis gas which serves as a primary fuel source of the electric generating facility.

(2) In any project with a capital investment from private sources of not less than One Billion Dollars ($1,000,000,000.00), all property, real, personal, or mixed, including fixtures and leaseholds utilized in a gasification process facility, including, but not limited to, operational and environmental property, utilized in the project shall be exempt from ad valorem taxation up to an

amount which shall not exceed fifty percent (50%) of the total assessed value in the project.

SOURCES: Laws, 2009, ch. 496, § 1, eff from and after passage (approved Apr. 6, 2009.)

§ 27-31-21. Public school libraries and buildings.

All public libraries and buildings in which the free public schools are taught, and the lots on which same are situated, not exceeding four (4) acres in dimensions, without cost to the state or any county or municipality thereof for rent or lease, and also the real and personal property of library associations, used for library purposes where no dividends are declared, and to which the children attending the public schools have free access, shall be exempt from all state, county, and municipal taxes.

SOURCES: Codes, 1906, § 4252; Hemingway's 1917, § 6883; 1930, § 3116; 1942, § 9710; Laws, 1900, ch. 52; Laws, 1924, ch. 338.

Cross References — School libraries, see § 37-55-1 et seq.

RESEARCH REFERENCES

ALR. When is property owned by state or local governmental body put to public use so as to be eligible for property tax exemption. 114 A.L.R.5th 561.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 290, 291.

CJS. 84 C.J.S., Taxation § 362 et seq.

§ 27-31-23. Confederate soldiers' home.

Any and all property maintained and operated for the benevolent purpose of a confederate soldiers' home is hereby exempted from all municipal, county and state taxation; provided no individual or corporation derive any revenue or income from such property.

SOURCES: Codes, 1906, § 4253; Hemingway's 1917, § 6884; 1930, § 3117; 1942, § 9711.

§ 27-31-25. Toll bridges.

If a toll bridge shall have been constructed outside of a municipality and completed and exempted by the county, and a municipality shall extend its limits so as to take in territory including said toll bridge, the said bridge and the operating company shall be exempt from municipal taxes for a period for which it shall be exempt from county taxes.

SOURCES: Codes, 1930, § 3118; 1942, § 9712; Laws, 1926, ch. 228.

Cross References — County toll bridges, generally, see §§ 65-21-7, 65-21-9.

§ 27-31-27. Registered or licensed aircraft.

All aircraft registered or licensed pursuant to Sections 61-15-1 through 61-15-13 shall be exempt from ad valorem taxation.

SOURCES: Laws, 1982, ch. 469, § 8; reenacted, Laws, 1984, ch. 516, § 8; reenacted, Laws, 1988, ch. 531, § 8, eff from and after January 1, 1989.

§ 27-31-29. Newly constructed single-family dwellings.

Any single-family dwelling, including a condominium unit which was built, or caused to be built, to completion on or after January 1, 1983, and is and always has been owned by the person, or his or her donee, who built or caused such dwelling to be built, shall, upon presentation of an affidavit to the tax assessor certifying that such dwelling or any part thereof has never been leased, rented, sold or occupied, be exempt from ad valorem taxation until the time that such dwelling is first leased, rented, sold or occupied. Said affidavit shall be filed not later than April 1 of each year for which an exemption is claimed. In such cases ad valorem taxes shall be assessed and levied on the value of the unimproved property where such dwelling is situated.

SOURCES: Laws, 1983, ch. 465, § 1, eff from and after passage (approved April 6, 1983).

§ 27-31-30. Certain military housing units and ancillary supporting facilities.

Military housing units and ancillary supporting facilities that are acquired or constructed pursuant to the Military Housing Privatization Initiative (10 USC 2871 et seq.) to support and house active duty military personnel and their families and Department of Defense civilian personnel shall be exempt from ad valorem taxation.

SOURCES: Laws, 2011, ch. 480, § 33, eff from and after passage (approved Apr. 6, 2011.)

§ 27-31-31. Structures within central business district of municipality.

(1) The governing authorities of any municipality are authorized, in their discretion, to grant exemptions from ad valorem taxation, except ad valorem taxation for school district purposes, for new structures or improvements to or renovations of existing structures located in the designated central business district of the municipality, for a period of not more than ten (10) years from the date of the completion of the new structure or the improvement to or renovation of the existing structure for which the exemption is granted.

(2) Any person, firm or corporation desiring to obtain the exemption authorized in this section shall first file a written application therefor with the governing authorities of the municipality, providing full information about the

property for which the exemption is requested, including the true value of all such property, and the date from which the exemption is to begin. Any application for an exemption under this section must be made within twelve (12) months from the date of the completion of the new structure or the improvement to or renovation of the existing structure for which the exemption is requested. The governing authorities of the municipality may, by order spread on their minutes, approve such application for all or any part of the property for which the exemption is requested and for all or any part of the authorized period of exemption. The order shall specify the property to be exempted and the dates when such exemption begins and expires. The municipal clerk shall record the application and the order approving the same in a book kept in his office for that purpose, and shall file one (1) copy of the application and the order with the Chairman of the State Tax Commission.

(3) Any exemption granted under this section shall be in lieu of ad valorem tax exemptions authorized under any other provision of law.

SOURCES: Laws, 1985, ch. 498; Laws, 2009, ch. 546, § 6, eff from and after passage (approved Apr. 15, 2009.)

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 27-3-4 provides that the terms "'Chairman of the Mississippi State Tax Commission,' 'Chairman of the State Tax Commission,' 'Chairman of the Tax Commission' and 'chairman' appearing in the laws of this state in connection with the performance of the duties and functions by the Chairman of the Mississippi State Tax Commission, the Chairman of the State Tax Commission or the Chairman of the Tax Commission shall mean the Commissioner of Revenue of the Department of Revenue."

ATTORNEY GENERAL OPINIONS

Exemptions from ad valorem taxation may only be granted for construction of new structure, or modifications to existing structure; this does not include landscaping, paving or any other activities not directly related to building, office or similar edifice. Carter, Feb. 8, 1990, A.G. Op. #90-0071.

Exemption from ad valorem taxation can only be granted for construction of new structures, or improvement to or renovation of existing structures; exempt property must be construed narrowly to apply only to actual new structure or improvement; maximum allowable deduction is actual cost of new structure or improvement, although city has discretion to exempt lower amount. Carter, Feb. 8, 1990, A.G. Op. #90-0071.

§ 27-31-32. Exemption from certain ad valorem taxes for residential structures improved, renovated or converted in areas designated as blighted; procedure.

(1) The governing authorities of any municipality are authorized, in their discretion, to grant exemptions from ad valorem taxation, except ad valorem taxation for school district purposes, for improvements to or renovations of

existing residential structures or existing structures converted for residential use that are located in the areas that are designated as blighted by the municipality, for a period of not more than ten (10) years from the date of the completion of the improvement to or renovation of the existing structure for which the exemption is granted.

(2) Any person, firm or corporation desiring to obtain the exemption authorized in this section shall first file a written application for the exemption with the governing authorities of the municipality, providing full information about the property for which the exemption is requested, including the true value of the property, and the date from which the exemption is to begin. Any application for an exemption under this section must be made within twelve (12) months from the date of the completion of the improvement to or renovation of the existing structure for which the exemption is requested. The governing authorities of the municipality may, by order spread on their minutes, approve an application for all or any part of the property for which the exemption is requested and for all or any part of the authorized period of exemption. The order shall specify the property to be exempted and the dates when the exemption begins and expires. The municipal clerk shall record the application and the order approving the exemption in a book kept in his office for that purpose, and shall file one (1) copy of the application and the order with the Department of Revenue.

(3) Any exemption granted under this section shall be in lieu of ad valorem tax exemptions authorized under any other provision of law.

SOURCES: Laws, 2013, ch. 504, § 2, eff from and after July 1, 2013.

§ 27-31-33. Certain leasehold interests belonging to the state or a political subdivision.

(1) All leasehold interests in any property, real or personal, belonging to the State of Mississippi, counties, districts, municipalities or any other political subdivision, which were created prior to July 1, 1984, pursuant to a lease agreement or contract and which had been allowed an ad valorem tax exemption, or treated as exempt from ad valorem taxation, prior to July 1, 1984, shall be exempt from ad valorem taxation unless such leasehold interest is made subject to ad valorem taxation by statute or by the terms of the lease agreement or contract creating such leasehold interest.

(2) The exemption granted in this section shall not apply to a leasehold interest in property belonging to the Pearl River Valley Water Supply District.

(3) This section shall apply to assessments of real property for ad valorem taxation for the 1984 taxable year and each taxable year thereafter.

SOURCES: Laws, 1984, ch. 456, § 1; Laws, 1985, ch. 467, § 1, eff from and after passage (approved April 3, 1985).

JUDICIAL DECISIONS

1. Private holders.

Leasehold interest held by a private holder was entitled to the exemption provided for under Miss. Code Ann. § 27-31-33; therefore, the holder's leasehold interest was exempt from ad valorem taxes. In re Assessment of Ad Valorem Taxes on Leasehold Interest Held by Reed Mfg., Inc., 854 So. 2d 1066 (Miss. 2003).

ATTORNEY GENERAL OPINIONS

Leasehold interests on government lands are subject to local ad valorem taxation under Miss. Code Section 27-31-33, unless specifically exempted. Barnes, Mar. 31, 1993, A.G. Op. #93-0146.

The current corporate lessee of county-owned property first leased in 1963 under the old A. & I. statutes with exemption from ad valorem taxes for an unspecified period is entitled to an exemption for 10 years from the date the county approved assignment of the lease to that company. When the 10 years has already expired and the county erroneously omitted that leasehold from the tax assessment rolls for several years, the county may not assess back taxes. Approval by the county of sub-leases of the property is not an unlawful donation to a private party. Munn, March 9, 2007, A.G. Op. #07-00067, 2007 Miss. AG LEXIS 101.

RESEARCH REFERENCES

ALR. Property tax: exemption of property leased by and used for purposes of otherwise tax-exempt body. 55 A.L.R.3d 430.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 242-257.

CJS. 84 C.J.S., Taxation §§ 234-239, 297-309.

§ 27-31-34. Possessory and leasehold interests of lessees under certain lease contracts, leases or leaseholds.

(1) For purposes of this section, “state” means the State of Mississippi or any county, district, municipality or other political subdivision thereof.

All lease contracts, leases or leaseholds in existence on or before April 16, 1993, (a) to which the state is a party, (b) which provide that the leased premises and all facilities and replacements thereof are and shall be the property of the state, and (c) which provide a term or period of time for exemption from ad valorem taxation, shall, along with the possessory and leasehold interests as described under and originally created by such lease contract, lease or leasehold, be exempt from all ad valorem taxation for the term or period of time as stated in such lease contracts, leases, or leaseholds meeting the requirements of subparts (a) and (b) above, which were entered into prior to July 1, 1984, and which do not contain an express term or period for exemption from ad valorem taxation, shall be exempt from all ad valorem taxation for the term of such lease contracts, leases, or leaseholds, including any option periods which may be exercised by the lessee. Any newly created lease contracts, leases or leaseholds created on or after January 18, 1984, shall not be exempt under this section from ad valorem taxes for school district purposes.

(2) It is the sense of the Legislature that the provisions of Section 112, Mississippi Constitution of 1890, allowing the Legislature to exempt, by general laws, particular species of property from taxation, in whole or in part, authorize the enactment of this section. Further, the provisions of this section shall not be construed as the surrender or abridgement by the state of the power to tax the property which is the subject of the contracts, leases or leaseholds referred to in subsection (1) of this section. This section affirms the power of the state to grant such an exemption when it is in the best interests of the state to do so.

(3) The provisions of this section shall not apply to:

(a) A leasehold interest in property belonging to the Pearl River Water Supply District; or

(b) Any civil action filed before April 16, 1993.

SOURCES: Laws, 1993, ch. 572, § 1, eff from and after passage (approved April 16, 1993).

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in the second sentence of subsection (2) was corrected by substituting "subsection (1) of this section" for "subsection (1) of this subsection."

JUDICIAL DECISIONS

1. Private holders.

Leasehold interest held by a private holder was entitled to the exemption provided for under Miss. Code Ann. § 27-31-34; therefore, the holder's leasehold interest was exempt from ad valorem taxes. In re Assessment of Ad Valorem Taxes on Leasehold Interest Held by Reed Mfg., Inc., 854 So. 2d 1066 (Miss. 2003).

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 27-31-34, any newly created leases or leaseholds created on or after January 18, 1984, shall not be exempt from ad valorem taxes for school district purposes. Wetzel, May 19, 1993, A.G.Op #93-0253.

By its terms, exemption from ad valorem taxation in Miss. Code Section 27-31-34 shall, for certain qualifying leaseholds, be for term of qualifying lease contract including option periods, notwithstanding that such contracts would extend exemption beyond ten-year limitation established by Mississippi Constitution Article 7, Section 182. Wetzel, May 19, 1993, A.G. Op. #93-0253.

Exemption granted by Miss. Code Section 27-31-34 is exercise of state power to exempt particular species of property from taxation authorized by Mississippi Constitution, and not "the surrender or abridgment" of state's power to tax. Wetzel, May 19, 1993, A.G. Op. #93-0253.

There is serious question as to validity of newly enacted Miss. Code Section 27-31-34 to extent it purports to extend corporate tax exemptions in excess of ten years; considering this question, Attorney General's office recommends placing on county land rolls any and all corporate properties that, except for this section, would not be exempt, and proceed to assess same at true value. Wetzel, May 19, 1993, A.G. Op. #93-0253.

Public officials may presume the constitutionality Section 27-31-34 and thereby act in reliance on its provisions. Gamble, Jan. 5, 1994, A.G. Op. #93-0951.

Assuming that an industrial building property falls within the scope of this section, the leasehold interest of a private industry in such property is liable only for school taxes. Tucker, January 15, 1999, A.G. Op. #99-0002.

In order for property to be exempt from ad valorem taxes for the term of a lease (a) the county must be a party to the contract; (b) the leased premises and all facilities and replacements thereof must be or become the property of the county; and (c) there must not be a term of tax exemption stated in the contract. Webb, June 14, 2002, A.G. Op. #02-0317.

The current corporate lessee of county-owned property first leased in 1963 under the old A. & I. statutes with exemption from ad valorem taxes for an unspecified period is entitled to an exemption for 10 years from the date the county approved assignment of the lease to that company. When the 10 years has already expired and the county erroneously omitted that leasehold from the tax assessment rolls for several years, the county may not assess back taxes. Approval by the county of sub-leases of the property is not an unlawful donation to a private party. Munn, March 9, 2007, A.G. Op. #07-00067, 2007 Miss. AG LEXIS 101.

§ 27-31-35. Property related to project defined in Mississippi Superconducting Super Collider Act.

All real and personal property belonging to the United States constituting a part of the project or a facility related to the project as defined in the Mississippi Superconducting Super Collider Act shall be exempt from ad valorem taxation.

SOURCES: Laws, 1987 Ex Sess, ch. 24, § 20, eff from and after passage (approved August 29, 1987).

Editor's Note — Chapter 24, § 20, Laws of 1987 Extraordinary Session, codified provisions for a new Section 27-31-35. Subsequently, Chapter 453, § 1, Laws of 1988, also codified material as Section 27-31-35. By direction of the Attorney General of Mississippi, the provisions of Laws of 1988, Chapter 453, § 1, have been codified as Section 27-31-37.

Chapter 535, § 9, Laws of 1989, provided that its provisions be codified as § 27-31-35. However, Laws of 1987 Extraordinary Session, ch. 24, § 20, previously codified material as § 27-31-35. By direction of the Attorney General of Mississippi, the provisions of Laws of 1989, ch. 535, § 9, have been codified as § 27-31-43 [Repealed].

§ 27-31-36. Railroad property owned by limited liability company or other entity wholly owned by railroad authority exempt from ad valorem taxation.

All railroad properties and facilities in this state owned by a limited liability company or other entity that is wholly owned by a railroad authority created under Section 19-29-1 et seq., shall be exempt from ad valorem taxation to the same extent as property belonging to such a railroad authority. For the purposes of this section, the term "railroad properties and facilities" means and has the same definition as that term has in Section 19-29-5.

SOURCES: Laws, 2016, ch. 483, § 6, eff from and after July 1, 2016.

§ 27-31-37. Railroad property acquired by owner not affiliated with previous owner.

(1) Except as otherwise provided in Section 27-31-38, whenever during any calendar year existing railroad property subject to assessment by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, is acquired by a new owner that is not an affiliate of the previous owner, such newly acquired railroad property shall be assessed for ad valorem taxation by the state or by any county, municipality, school district or other taxing district for a period of ten (10) tax years following the calendar year of such acquisition by the new owner, as follows:

(a) During the first tax year of new ownership, that portion of the assessed value of such newly acquired railroad property, as determined by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, that exceeds the assessed value of such newly acquired railroad property to the former owner for the last tax year that the former owner owned such property (hereinafter referred to as the "base year"), shall be totally exempt from ad valorem taxation.

(b) During the second tax year of new ownership, that portion of the assessed value of such newly acquired railroad property, as determined by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, that exceeds one hundred ten percent (110%) of the assessed value of such newly acquired railroad property to the former owner for the base year shall be totally exempt from ad valorem taxation.

(c) During the third tax year of new ownership, that portion of the assessed value of such newly acquired railroad property, as determined by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, that exceeds one hundred twenty percent (120%) of the assessed value of such newly acquired railroad property to the former owner for the base year shall be totally exempt from ad valorem taxation.

(d) During the fourth tax year of new ownership, that portion of the assessed value of such newly acquired railroad property, as determined by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, that exceeds one hundred thirty percent (130%) of the assessed value of such newly acquired railroad property to the former owner for the base year shall be totally exempt from ad valorem taxation.

(e) During the fifth tax year of new ownership, that portion of the assessed value of such newly acquired railroad property, as determined by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, that exceeds one hundred forty percent (140%) of the assessed value of such newly acquired railroad property to the former owner for the base year shall be totally exempt from ad valorem taxation.

(f) During the sixth tax year of new ownership, that portion of the assessed value of such newly acquired railroad property, as determined by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, that exceeds one hundred fifty percent (150%) of the assessed value of such newly acquired railroad property to the former owner for the base year shall be totally exempt from ad valorem taxation.

(g) During the seventh tax year of new ownership, that portion of the assessed value of such newly acquired railroad property, as determined by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, that exceeds one hundred sixty percent (160%) of the assessed value of such newly acquired railroad property to the former owner for the base year shall be totally exempt from ad valorem taxation.

(h) During the eighth tax year of new ownership, that portion of the assessed value of such newly acquired railroad property, as determined by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, that exceeds one hundred seventy percent (170%) of the assessed value of such newly acquired railroad property to the former owner for the base year shall be totally exempt from ad valorem taxation.

(i) During the ninth tax year of new ownership, that portion of the assessed value of such newly acquired railroad property, as determined by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, that exceeds one hundred eighty percent (180%) of the assessed value of such newly acquired railroad property to the former owner for the base year shall be totally exempt from ad valorem taxation.

(j) During the tenth tax year of new ownership, that portion of the assessed value of such newly acquired railroad property, as determined by the State Tax Commission pursuant to Section 27-35-301, Mississippi Code of 1972, that exceeds one hundred ninety percent (190%) of the assessed value of such newly acquired railroad property to the former owner for the base year shall be totally exempt from ad valorem taxation.

(2) The owner of any newly acquired railroad property shall claim the exemption provided by this section by notifying the State Tax Commission in writing within ninety (90) days after April 26, 1988, or within twelve (12) months from the date of acquisition of such newly acquired railroad property, whichever is later.

(3) For the purposes of this section, the phrase "first tax year of new ownership" shall be deemed to mean the 1988 tax year if the actual first tax year of new ownership occurred prior to the 1988 tax year, and in such cases the partial exemption from ad valorem taxes provided for in subsection (1) of this section shall commence with the 1988 tax year. No new owner shall be entitled to the exemption for any tax year with respect to which an assessment has been made final without protest.

(4) For each tax year with respect to which a new owner is entitled to a partial exemption from the assessed value of newly acquired railroad property, the State Tax Commission shall exclude the exempt portion of such assessment in making the assessment rolls and in the apportionment of assessed value pursuant to Section 27-35-309, Mississippi Code of 1972.

(5) The partial exemption from the assessed value of newly acquired railroad property authorized by this section shall not apply to railroad property sold on or after January 1, 2001.

SOURCES: Laws, 1988, ch. 453, § 1; Laws, 1995, ch. 590, § 2; Laws, 2001, ch. 448, § 1, eff from and after passage (approved Mar. 19, 2001.)

Editor's Note — Chapter 24, § 20, Laws of 1987 Extraordinary Session codified provisions for a new Section 27-31-35. Subsequently, Laws of 1988, Chapter 453, § 1, also codified material as Section 27-31-35. By direction of the Attorney General of Mississippi, the provisions of Laws of 1988, Chapter 453, § 1, have been codified as Section 27-31-37.

Laws of 1988, ch. 453, § 2, eff from and after passage (approved April 26, 1988), provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1995, ch. 590, § 3, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, two errors in the section text were corrected as follows: near the end of subsection (2), "April 26, 1988" was substituted for "the effective date of this act" and near the beginning of subsection (3), "this section" was substituted for "this act."

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 207-209, 317-329.

CJS. 84 C.J.S., Taxation §§ 252-265.

§ 27-31-38. Railroad property acquired by owner not affiliated with previous owner and which is a public entity, regional or county railroad authority or not-for-profit corporation.

Whenever during any calendar year existing railroad property subject to assessment by the State Tax Commission pursuant to Section 27-35-301 is sold to a new owner that is not an affiliate of the previous owner and which is a public entity, regional or county railroad authority, or a not-for-profit corporation exempt from payment of ad valorem taxes, and which was created by an Interstate Compact authorized by Section 77-9-531 and by an act of the Legislature of the State of Alabama, the State Tax Commission, upon the written request of the new owner, shall prorate the amount of ad valorem taxes levied and assessed against the railroad property sold by each county, municipality and other taxing district for the calendar year of sale between the selling railroad and the new owner as of the date of sale. The commission shall certify the amounts allocated to the new owner to the selling railroad, the new owner and to the taxing authorities of each county, municipality and other taxing district. Upon the certification, the selling railroad shall be entitled to take credit for and to deduct from its ad valorem taxes accruing on the property sold in each taxing district for the calendar year the pro rata parts or shares of the taxes that are allocated and certified by the State Tax Commission as being part or share of the taxes accruing to the new owner.

SOURCES: Laws, 1995, ch. 590, § 1, eff from and after passage (approved April 7, 1995).

Editor's Note — Laws of 1995, ch. 590, § 3, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 207-209, 317-329.

CJS. 84 C.J.S., Taxation §§ 252-265.

§ 27-31-39. Public trust tidelands.

All Public Trust Tidelands belonging to the State of Mississippi or any of its political subdivisions shall be exempt from ad valorem taxation.

SOURCES: Laws, 1989, ch. 495, § 15, eff from and after passage (approved March 31, 1989).

RESEARCH REFERENCES

Law Reviews. Jarman and McLaughlin, A higher purpose? The constitutionality of Mississippi's public trust tidelands legislation. 11 Miss. C. L. Rev. 5, Fall 1990.

§ 27-31-41. Certain drilling rigs.

There is hereby exempted from all ad valorem taxes becoming a lien on or after January 1, 1989, each drilling rig for which there has been procured a privilege license (as required in Section 27-17-423) in exploring for, attempting to obtain, or obtaining production of oil, gas, sulphur, salt or any other minerals whether such operation is continued from year to year or not. This exemption shall not apply to material or equipment in supply depots or yards or to additional equipment not utilized as a necessary part of the drilling rig which has been operated in Mississippi under a local privilege license properly procured.

SOURCES: Laws, 1989, ch. 507, § 2, eff from and after July 1, 1989.

§ 27-31-43. Repealed.

Repealed by Laws, 2017, ch. 404, § 9, effective from and after July 1, 2017.

§ 27-31-43 [Laws, 1989, ch. 535, § 9, eff from and after passage (approved April 17, 1989).]

Editor's Note — Former § 27-31-43 exempted real and personal property belonging to the United States constituting a part of the project or a facility related to the project as defined in the Mississippi Wayport Authority Act (codified as Section 61-4-1 et seq. and repealed effective July 1, 2017) from ad valorem taxation.

§ 27-31-45. Computer software.

Computer software shall be exempt from ad valorem taxation. For purposes of this section, computer software shall include any program or routine used to cause a computer to perform a specific task or set of tasks, including without limitation, system and application programs and all documentation related thereto.

SOURCES: Laws, 1991, ch. 532, § 1; Laws, 1992, ch. 514, § 1, eff from and after July 1, 1992.

Editor's Note — Laws of 1991, ch. 532, § 2, effective from and after July 1, 1991, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

RESEARCH REFERENCES

ALR. Computer software or printout transactions as subject to state sales or use tax. 36 A.L.R.5th 133.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 195.

§ 27-31-47. Furniture marketing businesses.

(1) The board of supervisors of any county or the governing authority of any municipality is authorized, in its discretion, to exempt, partially or totally from ad valorem taxation, except ad valorem taxes for school district purposes, the following types of enterprises: any enterprise, located in the county or municipality, that (a) operates in a structure or facility which has a total measurement of at least three hundred twenty-five thousand (325,000) square feet in floor space; and (b) is engaged in the furniture industry, with a primary interest in marketing or exhibiting furniture.

(2) The exemption granted under this section may be a full or total ad valorem exemption from taxation; or it may be a limited or partial exemption that exempts the enterprise from any ad valorem taxation over the level of taxation that such an enterprise is subject to on July 1, 1993. The time of the exemption granted under this section shall be for a period of ten (10) years, which shall begin on the date the exemption is granted. Any request for an exemption must be made in writing to the board of supervisors or the municipal governing authority.

(3) Any exemption granted under this section shall be in addition to all other exemptions heretofore granted by the laws of the State of Mississippi.

SOURCES: Laws, 1993, ch. 490, § 1, eff from and after July 1, 1993.

Editor's Note — Laws of 1993, ch. 490, § 3, effective July 1, 1993, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-31-48. Vendor tooling.

(1)(a) Except as otherwise provided in paragraph (b) of this subsection, as used in this subsection, the term "vendor tooling" means any special tools such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes, owned by a business enterprise operating a motor vehicle production and assembly plant that are held for use in motor vehicle and motor vehicle parts production and assembly and are located off the site of the motor vehicle production and assembly plant of such business enterprise. For purposes of this paragraph "business enterprise operating a motor vehicle production and assembly plant" means a business enterprise that produces not less than fifty thousand (50,000) motor vehicles annually.

(b) For a project that has been certified by the Mississippi Major Economic Impact Authority as a project as defined in Section 57-75-5(f)(xxi), the term "vendor tooling" means any special tools such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes, owned by a business enterprise operating a motor vehicle production and assembly plant that are held for use in motor vehicle and motor vehicle parts production and assembly and are located on or off the site of the motor vehicle production and assembly plant of such business enterprise.

(c) Vendor tooling as defined in this subsection shall be exempt from ad valorem taxation.

(2)(a) For purposes of this subsection:

(i) "Vendor tooling" means any special tools such as dies, molds, jigs and similar items treated as special tooling for federal income tax purposes, used to manufacture parts for a business enterprise operating a motor vehicle production and assembly plant that are held for use in motor vehicle and motor vehicle parts production. The special tools must be located at the site of the tier one supplier and must be directly owned by the tier one supplier.

(ii) "Tier one supplier" means a tier one supplier as defined in Section 57-75-5(*l*) which has a minimum capital investment from private sources of not less than Fifty Million Dollars ($50,000,000.00).

(b) County boards of supervisors and municipal authorities are authorized and empowered, in their discretion, to exempt up to thirty percent (30%) of the true value of vendor tooling owned by a tier one supplier from ad valorem taxation.

SOURCES: Laws, 2000, 3rd Ex Sess, ch. 1, § 3; Laws, 2007, ch. 303, § 27; Laws, 2008, ch. 436, § 1, eff from and after passage (approved Apr. 7, 2008.)

Cross References — Mississippi Major Economic Impact Authority generally, see § 57-75-1 et seq.

§ 27-31-49. Itinerant vessels.

The board of supervisors of any county bordering on the Gulf of Mexico with a population in excess of one hundred sixty thousand (160,000) according to the 1990 federal decennial census, or the governing authority of any municipality located in any such county, is hereby authorized and empowered to exempt all itinerant vessels within such a county or municipality from ad valorem taxation. As used in this section, "itinerant vessel" means vessels engaged in interstate commerce which are temporarily docked at a state port organized pursuant to Section 59-5-1, et seq., Mississippi Code of 1972, but shall not include any cruise vessel or vessel upon which legal gaming is conducted pursuant to the Mississippi Gaming Control Act.

SOURCES: Laws, 1993, ch. 604, § 2, eff from and after October 1, 1993.

Editor's Note — Laws of 1993, ch. 604, § 4, effective October 1, 1993, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Mississippi Gaming Control Act, see § 75-76-1 et seq.

§ 27-31-50. Real property with structures or improvements that have been rehabilitated for residential use.

(1) The governing authority of any incorporated municipality may adopt an ordinance providing for the partial exemption from municipal ad valorem taxation of real property on which any structure or other improvement that is not less than twenty-five (25) years of age has undergone substantial rehabilitation, renovation or replacement for residential use, subject to such conditions and other restrictions authorized in this section. The ordinance may restrict such exemption to real property located within certain areas as may be determined by the governing authority and prescribed by the ordinance. The governing authority of a municipality shall establish criteria for determining whether real property qualifies for the partial exemption provided for in this section, shall require the structures or improvements to be older than twenty-five (25) years of age and may place such other restrictions and conditions on such property as may be prescribed by ordinance. The ordinance may also provide for the partial exemption from municipal ad valorem taxation of multifamily residential units which have been substantially rehabilitated by replacement for multifamily use. Any replacement structure shall not exceed the total square footage of the replaced structures by more than thirty percent (30%).

(2) The partial exemption provided by an ordinance adopted pursuant to this section may be (a) in an amount equal to the increase in the assessed value of the property resulting from the rehabilitation, renovation or replacement of the structure as determined by the tax assessor, or (b) an amount of not more than fifty percent (50%) of the cost of the rehabilitation, renovation or replacement. The exemption may commence upon completion of the rehabilitation, renovation or replacement or on January 1 of the year following completion of the rehabilitation, renovation or replacement and shall last for a period of time not to exceed ten (10) years. The ordinance may prescribe a

shorter time period for the length of the exemption, or reduce the amount of the exemption in annual steps over the length of the exemption or a portion thereof.

(3) The governing authority of a municipality may assess a fee not to exceed Fifty Dollars ($50.00) for processing an application requesting the exemption provided for in this section. No property shall be eligible for the exemption unless the appropriate building permits have been acquired and the tax assessor has verified that the rehabilitation, renovation or replacement indicated on the application has been completed.

(4) If the governing authority of a municipality desires to grant a partial exemption after July 1, 2000, the governing authority must adopt an ordinance declaring its intention to grant the exemption and finding that such exemption will promote the economic, cultural or educational advancement of the municipality. The governing authority of the municipality shall publish notice of its intention to grant the exemption at least ten (10) days before the actual granting of the exemption.

SOURCES: Laws, 1995, ch. 501. § 1; Laws, 2000, ch. 609, § 1, eff from and after July 1, 2000.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 232-234, 254-258.

CJS. 84 C.J.S., Taxation §§ 300-309.

FREE PORT WAREHOUSES

SEC.
27-31-51. Licensing; definitions.
27-31-53. Exemption from taxation of personal property in transit through state.
27-31-55. Filing of inventories by warehouses; records generally; determination of taxes.
27-31-57. Power and authority of tax assessor; inspection of records; renewal or revocation of license.
27-31-59. License fee.
27-31-61. Exemption granted to be in addition to other exemptions.

§ 27-31-51. Licensing; definitions.

(1) As used in Sections 27-31-51 through 27-31-61:

(a) "Warehouse" or "storage facility" shall not apply to caves or cavities in the earth, whether natural or artificial;

(b) "Governing authorities" means the board of supervisors of the county wherein the warehouse or storage facility is located or the governing authorities of the municipality wherein the warehouse or storage facility is located, as the case may be;

(c) "Tax assessor" means the tax assessor of each taxing jurisdiction in which the warehouse or storage facility may be located.

(2) All warehouses, public or private, or other storage facilities in the State of Mississippi regularly engaged in the handling and storage of personal

property in structures or in places adopted for such handling and storage which is consigned or transferred to such warehouse or storage facility for storage and handling shall be eligible for licensing under the provisions of Sections 27-31-51 through 27-31-61 as a "free port warehouse." A manufacturer of personal property that maintains separate facilities, structures, places or areas for the temporary storage and handling of such personal property pending transit to a final destination outside the State of Mississippi shall be eligible for licensing under Sections 27-31-51 through 27-31-61 as a "free port warehouse," and any license issued to such a manufacturer before January 1, 2012, is hereby ratified, approved and confirmed.

(3) Such licenses shall be issued by the governing authorities to such warehouse or storage facility as will qualify under the definition of "free port warehouse" as herein defined, upon application by the warehouse or storage facility operator.

SOURCES: Codes, 1942, § 9699-01; Laws, 1962, ch. 595, § 1; Laws, 1981, ch. 419, § 1; Laws, 1993, ch. 621, § 2; Laws, 2002, ch. 402, § 1; Laws, 2012, ch. 342, § 1, eff from and after Jan. 1, 2012.

Editor's Note — Laws of 1981, ch. 419, § 5, provides as follows:

SECTION 5. Any exemption from ad valorem taxes heretofore granted to holders of a valid free port warehouse license for the calendar year next preceding the effective date of this act [January 1, 1982] shall continue in full force and effect. No exemption from ad valorem taxation granted by any law other than by Sections 27-31-51 through 27-31-61 shall be affected by this act.

Laws of 1993, ch. 621, § 3, effective July 1, 1993, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Department of Revenue, see § 27-3-1 et seq.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 1, 5-8 et seq.

CJS. 53 C.J.S., Licenses §§ 1, 2, 4.

§ 27-31-53. Exemption from taxation of personal property in transit through state.

All personal property in transit through this state which is (a) moving in interstate commerce through or over the territory of the State of Mississippi, (b) which was consigned or transferred to a licensed "free port warehouse," public or private, within the State of Mississippi for storage in transit to a final destination outside the State of Mississippi, whether specified when transportation begins or afterward, or (c) manufactured in the State of Mississippi and stored in separate facilities, structures, places or areas maintained by a manufacturer, licensed as a free port warehouse, for temporary storage or handling pending transit to a final destination outside the State of Mississippi, may, in the discretion of the board of supervisors of the county wherein the warehouse or storage facility is located, and in the discretion of the governing authorities of the municipality wherein the warehouse or storage facility is located, as the case may be, be exempt from all ad valorem taxes imposed by the respective county or municipality and the property exempted therefrom shall not be deemed to have acquired a situs in the State of Mississippi for the purposes of such taxation. Any exemption granted to a licensed "free port warehouse" pursuant to this section shall be effective as of the first calendar day of the taxable year in which the warehouse applied for the exemption by virtue of submitting the application for licensure, and shall remain in effect for such period of time as the respective governing authority may prescribe. Such property shall not be deprived of exemption because while in a warehouse the property is bound, divided, broken in bulk, labeled, relabeled or repackaged. Any exemption from ad valorem taxes granted before January 1, 2012, is hereby ratified, approved and confirmed.

SOURCES: Codes, 1942, § 9699-02; Laws, 1962, ch. 595, § 2; Laws, 1981, ch. 419, § 2; Laws, 2003, ch. 511, § 1; Laws, 2012, ch. 342, § 2; Laws, 2013, ch. 325, § 1, eff from and after passage (approved March 7, 2013.)

Editor's Note — Laws of 1981, ch. 419, § 5, provides as follows:

"SECTION 5. Any exemption from ad valorem taxes heretofore granted to holders of a valid free port warehouse license for the calendar year next preceding the effective date of this act [January 1, 1989] shall continue in full force and effect. No exemption from ad valorem taxation granted by any law other than by Sections 27-31-51 through 27-31-61 shall be affected by this act."

ATTORNEY GENERAL OPINIONS

Counties and municipalities may exempt only their respective taxes and whichever entity, county or municipality, has authority may exempt school taxes for purposes of personal property taxes on goods in transit or in free port warehouses. McDonald, March 6, 1998, A.G. Op. #98-0113.

There is no statute limiting the number of years for which a free port warehouse license may be issued; raw materials which are being stored prior to being processed at an in-state facility do not qualify for the free port warehouse exemption; term "eligible property" for purposes of the exemption is personal property in transit through the state that is either moving in interstate commerce or is consigned to a warehouse for storage and transit to a destination out of state; sole authority for revoking a free port warehouse license is in the State Tax Commission, although a local governing body may grant an exemption for eligible property for such period of time as it may prescribe. Andrews, March 27, 1998, A.G. Op. #98-0148.

For goods to be eligible for an exemption under the statute, it is not enough that they are being temporarily stored in Mississippi during the manufacturing process; to be exempt, the goods must only be in the state of Mississippi for purposes of storage in a licensed "free port warehouse" or moving through the state on the way to a final destination outside Mississippi and, even then, the decision as to whether to grant an exemption is in the discretion of the board of supervisors. Gamble, III, Oct. 20, 2000, A.G. Op. #2000-0627.

The board of supervisors cannot retroactively grant a free port warehouse exemption where it is determined that the applicant failed to apply for such exemption by mistake. Chamberlin, December 14, 2001, A.G. Op. #2001-0743.

§ 27-31-55. Filing of inventories by warehouses; records generally; determination of taxes.

Each licensed "free port warehouse" shall file with the tax assessor of each taxing jurisdiction in which such warehouse or storage facility may be located an inventory of all personal property consigned or transferred to such warehouse or storage facility and located therein on January 1 of each year. Such inventory shall be submitted on such forms and in such manner as the tax assessor may prescribe and shall contain a separate statement of all property eligible for exemption under Sections 27-31-51 through 27-31-61 and a separate statement of all property consigned or transferred to such warehouse or storage facility. Such inventory shall be submitted by not later than March 31 of each year. Exemption shall be allowed for all eligible property, but accurate records shall be kept of all personal property shipped from any such warehouse or storage facility, together with the point of final destination of the same, and reports thereof shall be filed with such taxing authorities of this state and in such form and manner as the tax assessor may prescribe. At the conclusion of each calendar year each licensee under Sections 27-31-51 through 27-31-61 shall calculate the actual percentage of all personal property consigned or transferred to the warehouse or storage facility which was shipped to a final destination outside the state in relation to the total of all such personal property shipped to any destination during such year. Such percentage shall then be applied to the total value of all property contained in the inventory of such warehouse or storage facility as of January 1 of such year which was consigned or transferred to such warehouse or storage facility. If the result thus obtained shall be less than the value of property for which exemption was allowed, then the amount of such difference shall be deducted from the amount of the exemption previously allowed and taxes shall be levied and collected thereon by the tax collecting officers concerned.

SOURCES: Codes, 1942, § 9699-03; Laws, 1962, ch. 595, § 3; Laws, 1981, ch. 419, § 3; Laws, 2002, ch. 402, § 2; Laws, 2003, ch. 511, § 2, eff from and after Jan. 1, 2003.

Editor's Note — Laws of 1981, ch. 419, § 5, provides as follows:

"SECTION 5. Any exemption from ad valorem taxes heretofore granted to holders of a valid free port warehouse license for the calendar year next preceding the effective date of this act [January 1, 1982] shall continue in full force and effect. No exemption from ad valorem taxation granted by any law other than by Sections 27-31-51 through 27-31-61 shall be affected by this act."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, a typographical error in the bracketed effective date language preceding the second tier of the section was corrected by substituting "July 1, 2013" for "July, 2013."

§ 27-31-57. Power and authority of tax assessor; inspection of records; renewal or revocation of license.

The tax assessor shall have full power and authority to require the keeping of all records and the making of all reports necessary to the accomplishment of the purpose of Sections 27-31-51 through 27-31-61, and all books and records of any licensee shall be subject to the inspection of duly authorized agents of the ad valorem taxing authorities of the jurisdiction or jurisdictions wherein such licensee is located. The violation by the licensee of any of the terms and provisions of Sections 27-31-51 through 27-31-61 shall authorize the revocation of the license of any licensee by the tax assessor. In the event any license shall be revoked, then the exemption provided for therein shall thereby be annulled for the year in which such license may be revoked.

SOURCES: Codes, 1942, § 9699-04; Laws, 1962, ch. 595, § 4; Laws, 1981, ch. 419, § 4; Laws, 2002, ch. 402, § 3, eff from and after July 1, 2002.

Editor's Note — Laws of 1981, ch. 419, § 5, provides as follows:

"SECTION 5. Any exemption from ad valorem taxes heretofore granted to holders of a valid free port warehouse license for the calendar year next preceding the effective date of this act [January 1, 1982] shall continue in full force and effect. No exemption from ad valorem taxation granted by any law other than by Sections 27-31-51 through 27-31-61 shall be affected by this act."

Cross References — Specific duties and powers of Department of Revenue, see § 27-3-31.

JUDICIAL DECISIONS

1. In general.

When the Mississippi Tax Commission issues a license qualifying a corporation as a free port warehouse, a municipality may not revoke that license and assess ad valorem taxes upon finding that the corporation did not comply with regulations of the Commission, notwithstanding the right given under this section to taxing authorities to inspect records of the warehouse. City of Jackson v. DeSoto, Inc., 350 So. 2d 686 (Miss. 1977).

ATTORNEY GENERAL OPINIONS

Based on Section 27-31-57 the State Tax Commission has the sole authority and power to revoke a free port warehouse license. Therefore, a tax assessor does not have the authority to assess taxes on property that is exempt under a free port warehouse license which has not been revoked by the State Tax Commission. McKenzie, November 22, 1995, A.G. Op. #95-0776.

§ 27-31-59. License fee.

Each licensee shall pay to the governing authorities for each license which may be issued or renewed a fee in the amount of Ten Dollars ($10.00) for each issuance or renewal thereof.

SOURCES: Codes, 1942, § 9699-05; Laws, 1962, ch. 595, § 5; Laws, 2002, ch. 402, § 4, eff from and after July 1, 2002.

ATTORNEY GENERAL OPINIONS

There is no statute limiting the number of years for which a free port warehouse license may be issued; raw materials which are being stored prior to being processed at an in-state facility do not qualify for the free port warehouse exemption; term "eligible property" for purposes of the exemption is personal property in transit through the state that is either moving in interstate commerce or is consigned to a warehouse for storage and transit to a destination out of state; sole authority for revoking a free port warehouse license is in the State Tax Commission, although a local governing body may grant an exemption for eligible property for such period of time as it may prescribe. Andrews, March 27, 1998, A.G. Op. #98-0148.

RESEARCH REFERENCES

Am Jur. 51 Am. Jur. 2d, Licenses and Permits §§ 64, 65 et seq.

CJS. 53 C.J.S., Licenses § 101 et seq.

§ 27-31-61. Exemption granted to be in addition to other exemptions.

The exemption granted in Sections 27-31-51 through 27-31-61 shall be in addition to all other exemptions heretofore granted by the laws of the State of Mississippi.

SOURCES: Codes, 1942, § 9699-06; Laws, 1962, ch. 595, § 6, eff from and after passage (approved June 1, 1962).

NON-PRODUCING GAS, OIL, AND MINERAL INTERESTS

Sec.

27-31-71. Definitions.
27-31-73. Interests exempted.
27-31-75. Application for exemption of existing interests.
27-31-77. Mineral documentary tax; levy.
27-31-79. Mineral documentary tax; amount; lien.
27-31-81. Persons liable for tax; time for payment; penalty for insufficient payment.
27-31-83. Documentary tax stamps; proof of payment.
27-31-85. Disposition of funds collected.
27-31-87. Repealed.

§ 27-31-71. Definitions.

Whenever the term "oil, gas and other minerals" is used in Sections 27-31-71 through 27-31-87, the same shall include oil, gas petroleum, hydrocarbons, distillate, condensate, casinghead gas, other petroleum derivatives, sulphur and all other similar minerals of commercial value which are usually produced or mined by the drilling, boring or sinking of wells.

The terms "mineral acre" and "royalty acre" are each defined as the number of acres obtained by multiplying the aggregate acreage described in the instrument involved by the fractional interest leased or conveyed thereby.

The term "primary term" when used herein in connection with any instrument affected by Sections 27-31-71 through 27-31-87 shall mean the period of time that the estate created by such instrument shall endure under the terms thereof in the absence of production of oil, gas or other minerals in paying quantities, the carrying on of drilling or reworking operations for the production of such oil, gas or other minerals, force majeure or laws, rules or regulations (federal or state) preventing such drilling operations.

SOURCES: Codes, 1942, § 9701-01; Laws, 1946, ch. 409, § 1, eff and in force 60 days after passage (approved April 10, 1946).

Editor's Note — Section 27-31-87, referred to in the first and last paragraphs, was repealed, by Laws of 2008, ch. 381, § 5, effective from and after January 1, 2009.

Cross References — Taxation of mineral interests separately owned, see § 27-35-51.

JUDICIAL DECISIONS

1. In general.

In a suit against land commissioner and mineral lease commission to determine title to mineral rights, where the owner of the mineral interests on the property sold to state for taxes remained in possession of such rights, continued to pay taxes and was not ousted, the two-year limitation period for being sued to cancel the tax title did not apply. State v. Wilbe Lumber Co., 217 Miss. 346, 64 So. 2d 327 (1953).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 283.

CJS. 84 C.J.S., Taxation § 322.

Law Reviews. 1979 Mississippi Supreme Court Review: Property, 50 Miss. L. J. 865, December 1979.

§ 27-31-73. Interests exempted.

To encourage the purchase of leases upon and interests in oil, gas and other minerals in the State of Mississippi, to encourage drilling for and production of such minerals, and to relieve the taxing officials of the counties of the state of the onerous duties of assessment for, collection of and sale for ad valorem taxes for such interests (which the Legislature finds are generally assessed at nominal values resulting in taxes not commensurate with the services required of such officers), all nonproducing leasehold interests upon all oil, gas and other minerals in, on or under lands lying within the State of Mississippi, created or assigned after the effective date of Sections 27-31-71 through 27-31-87, and also all nonproducing interests in such oil, gas and other minerals (including royalty interests therein) hereafter conveyed to a grantee or purchaser or excepted or reserved to a grantor separately and apart from the surface, shall be exempt from all ad valorem taxes levied on or after January 1, 1947, by the State of Mississippi, or any county, municipality, levee district, road district, school district, drainage district or other taxing district within the state or becoming a lien on or after said date. Any sale for taxes of the surface or of the remainder of the fee shall not in any manner whatsoever affect the interest or interests hereby exempted.

For the same purpose and with like effect there is hereby likewise exempted from such ad valorem taxation all such interests created prior to the passage of Sections 27-31-71 through 27-31-87 which are owned separately and apart from the surface, provided that as a condition precedent to obtaining such exemption upon existing interests the then owner thereof shall make application for exemption of the interest then owned by him as hereinafter provided and pay, in the manner provided under this chapter, a sum equivalent to the tax herein levied by Section 27-31-77 on instruments hereafter executed creating, transferring or reserving corresponding or similar interests. If any such sum is paid after January 1, 1947, then such exemption shall apply only to taxes becoming a lien after such sum is thus paid.

SOURCES: Codes, 1942, § 9701-02; Laws, 1946, ch. 409, § 2; Laws, 2008, ch. 381, § 1, eff from and after Jan. 1, 2009.

Editor's Note — Section 27-31-87, referred to in the first and second paragraphs was repealed, by Laws of 2008, ch. 381, § 5, effective from and after January 1, 2009.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

The section [Code 1942, § 9701-02] exempting from ad valorem taxes both existing and subsequently acquired mineral leases is valid. Mississippi Power & Light Co. v. Love, 201 Miss. 676, 27 So. 2d 850 (1946).

2. Construction and application.

This section [Code 1942, § 9701-02] is self-operating and grants the exemption upon creation of the severed mineral interest. Gray v. Steelman, 243 Miss. 294, 137 So. 2d 797 (1962).

The statute operates to exempt from current ad valorem taxes on land a nonproducing mineral interest severed therefrom after taxes for the current year became a lien. Gray v. Steelman, 243 Miss. 294, 137 So. 2d 797 (1962).

ATTORNEY GENERAL OPINIONS

All leaseholds created prior to July 1, 1984, which were allowed ad valorem tax exemption, or treated as exempt from ad valorem taxation prior to July 1, 1984, were made tax exempt from ad valorem taxation until such leasehold interest is made subject to ad valorem taxation by statute or by terms of lease agreement or contract creating such leasehold interest; statute would "grandfather" all such leaseholds however created. Redding, May 10, 1990, A.G. Op. #90-0331.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

The Effect of Bankruptcy and Encumbrances on Mineral Interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 27-31-75. Application for exemption of existing interests.

Application for such exemption upon existing interests shall be made to the chancery clerk of the county wherein the land lies in which such interest is owned, by filing application in duplicate with the said clerk, which shall contain the following information:

(a) Name of applicant;

(b) Address of applicant;

(c) Description of land affected (including aggregate acreage);

(d) Fractional interest for which exemption is applied and nature of such interest;

(e) Recording data concerning the instrument creating the interest including grantor or lessor, grantee or lessee, date of instrument, book and page of record and date of filing;

(f) Length of primary term;

(g) Recording data on instruments divesting original party of any interest in a portion of original interest therein conveyed;

(h) Number of net mineral, royalty or lease acres on which exemption sought;

(i) Amount tendered therewith.

Upon receipt of such application, accompanied by the sum shown therein, the chancery clerk shall give it a serial number, mark it filed, showing the date received and shall note the payment of the mineral documentary tax on the original application. The clerk shall make a notation on the face of the record of the instrument described in the application showing the date of payment, the amount of the payment as stated in the application and the serial number of the application. After such notation is made, the original application, with the required notations, shall be returned to the applicant by mailing to the address shown on the application (or delivered otherwise to the applicant) and the duplicate application shall be retained by the clerk as his permanent record.

If it later be ascertained that an insufficient amount was paid with the application for the exemption provided herein, such exemption shall not be thereby rendered void but the additional amount which should have been paid, together with a penalty of twenty-five percent (25%) and one percent (1%) interest per month thereon from the date of the application until paid, shall be a lien on the interest exempted and a personal debt of the applicant collectible by suit for appropriate personal judgment and to enforce the lien, which may be maintained by the county to which such sum should have been paid.

SOURCES: Codes, 1942, § 9701-03; Laws, 1946, ch. 409, § 3; Laws, 2008, ch. 381, § 2, eff from and after Jan. 1, 2009.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 27-31-77. Mineral documentary tax; levy.

There is hereby levied and shall be paid and collected, as herein set forth, a documentary or transfer tax, to be known as the mineral documentary tax, upon the filing and recording of every lease and other writing hereafter executed whereby there is created a leasehold interest in and to any nonproducing oil, gas or other minerals in, on or under or that may be produced from any lands situated within the State of Mississippi, or whereby any such interest is assigned or is extended beyond the primary term fixed by the original instrument, and upon every deed, instrument, transfer, evidence of sale or other writing whereby there is hereafter conveyed to a grantee or purchaser, or excepted or reserved to a grantor separately and apart from the surface, any interest in, or right to receive royalty from, any nonproducing oil, gas or other minerals in, on or under or that may be produced from any lands within the State of Mississippi. Provided, the tax shall not apply to any mortgage or instrument creating a lien upon such interest, nor to the sale under foreclosure thereof, or the passing of such interest by descent or will.

SOURCES: Codes, 1942, § 9701-04; Laws, 1946, ch. 409, § 4; Laws, 1964, ch. 519, eff from and after passage (approved March 26, 1964).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 155-157.

72 Am. Jur. 2d, State and Local Taxation § 664.

CJS. 84 C.J.S., Taxation §§ 92-95, 164.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 27-31-79. Mineral documentary tax; amount; lien.

The mineral documentary tax shall be a lien upon the interest leased, assigned, conveyed, reserved, excepted or transferred and the amount to be paid shall be determined as follows (provided that the minimum tax shall be one dollar), to-wit:

(a) Upon the filing and recording of each instrument creating, assigning or transferring a leasehold (or interest therein or any portion thereof) or conveying, transferring, excepting or reserving a mineral or royalty interest as above described, the primary term of which shall expire ten (10) years or less from the date of the execution of the instrument, the tax shall be a sum equal to Three Cents (3¢) per mineral or royalty acre conveyed, leased, assigned, excepted, reserved or transferred therein.

(b) Such tax shall be Six Cents (6¢) per mineral or royalty acre if the primary term of such interest shall expire more than ten (10) years and not exceeding twenty (20) years from the date of the execution of such instrument.

(c) Such tax shall be Eight Cents (8¢) per mineral or royalty acre if the primary term of such interest shall extend more than twenty (20) years from the date of the execution of such instrument.

SOURCES: Codes, 1942, § 9701-05; Laws, 1946, ch. 409, § 5, eff and in force 60 days after passage (approved April 10, 1946).

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

The Effect of Bankruptcy and Encumbrances on Mineral Interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 27-31-81. Persons liable for tax; time for payment; penalty for insufficient payment.

The mineral documentary tax shall be payable by the grantee or grantees named in and the beneficiary or real party in interest under such lease, deed, conveyance, transfer, assignment or other writing, except that as to any exception or reservation creating any such interest the tax shall be payable by the grantor or grantors in such instrument. The tax shall be due and payable upon the filing of the instrument for record, and the chancery clerk shall note the fact of the payment as provided in Section 27-31-83. Any chancery clerk, who accepts or records an instrument upon which the tax is not paid to him as required under this section, shall be liable to the county for double the amount of tax shown to have been due upon the instrument; however, the chancery clerk shall not be liable for any sum where the amount of the tax tendered is accepted by him in good faith as the proper amount due. If an insufficient amount is paid for the tax, the filing and recording of the instrument shall nevertheless be good and valid for all purposes as now provided by statute, but the additional amount which should have been paid, together with a penalty of twenty-five percent (25%) thereof and one percent (1%) interest per month thereon from the due date until paid, shall be a lien on the interest conveyed, reserved or excepted therein, and a personal debt of the said taxpayer, collectible by suit by the county for personal judgment or to enforce the lien or both.

SOURCES: Codes, 1942, § 9701-06; Laws, 1946, ch. 409, § 6; Laws, 2008, ch. 381, § 3, eff from and after Jan. 1, 2009.

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 27-31-83. Documentary tax stamps; proof of payment.

The mineral documentary tax shall be paid to the chancery clerk of the county in which the land affected by the sale, lease or reservation or other instrument of the oil, gas or other minerals is situated. Upon payment of the tax, the chancery clerk shall note on the face or margin of the instrument, the following: (a) the fact of the payment; (b) the total amount of the tax paid in conjunction with the recording of the instrument; and (c) the name of the county in which the instrument is filed. This notation shall constitute sufficient proof of payment of the tax.

SOURCES: Codes, 1942, § 9701-07; Laws, 1946, ch. 409, § 7; Laws, 2008, ch. 381, § 4, eff from and after Jan. 1, 2009.

RESEARCH REFERENCES

CJS. 84 C.J.S., Taxation § 164.

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 27-31-85. Disposition of funds collected.

From the taxes levied and collected under and by virtue of Sections 27-31-77 through 27-31-83 inclusive, the chancery clerk shall retain five percent (5%) as a fee for the collection thereof, and shall pay the remainder thereof into the proper depository to the credit of the county, one-half (½) to the common county fund and one-half (½) to the county school fund. Such deposit shall be made on or before the 15th day of the month next succeeding that in which such collection may be made. The same percent of collections shall be retained by him from all funds collected by virtue of Section 27-31-75 hereof, and the remainder shall be likewise deposited.

SOURCES: Codes, 1942, § 9701-08; Laws, 1946, ch. 409, § 8, eff and in force 60 days after passage (approved April 10, 1946).

RESEARCH REFERENCES

Law Reviews. 1979 Mississippi Supreme Court Review: Property. 50 Miss. L. J. 865, December 1979.

§ 27-31-87. Repealed.

Repealed by Laws, 2008, ch. 381, § 5, effective January 1, 2009.

§ 27-31-87. [Codes, 1942, § 9701-09; Laws, 1946, ch. 409, § 9; Laws, 1985, ch. 455, § 7, eff from and after passage (approved March 29, 1985).]

Editor's Note — Former § 27-31-87 provided that the State Tax Commission should prepare and distribute documentary stamps to the chancery clerks.

NEW FACTORIES AND ENTERPRISES

Sec.	
27-31-101.	Enumeration of new enterprises which may be exempted.
27-31-102.	Exemption of equipment used in connection with enhanced oil recovery projects.
27-31-103.	Exemption of property used in operation of new hotels or motels in certain counties.
27-31-104.	Grant of fee in lieu of taxes for certain projects.
27-31-105.	Additions to or expansions of facilities or properties or replacement of equipment used in connection with certain enterprises.
27-31-107.	Applications for exemptions.
27-31-109.	Granting of exemptions.
27-31-111.	Cessation of exempted operations.
27-31-113.	Cancellation of exemption obtained by fraud, etc.
27-31-115.	Grant of exemptions by municipalities.
27-31-117.	State taxes.

§ 27-31-101. Enumeration of new enterprises which may be exempted.

[Through June 30, 2022, this section shall read as follows:]

(1) County boards of supervisors and municipal authorities are hereby authorized and empowered, in their discretion, to grant exemptions from ad valorem taxation, except state ad valorem taxation; however, such governing authorities shall not exempt ad valorem taxes for school district purposes on tangible property used in, or necessary to, the operation of the manufacturers and other new enterprises enumerated by classes in this section, except to the extent authorized in Sections 27-31-104 and 27-31-105(2), nor shall they exempt from ad valorem taxes the products of the manufacturers or other new enterprises or automobiles and trucks belonging to the manufacturers or other new enterprises operating on and over the highways of the State of Mississippi. The time of such exemption shall be for a period not to exceed a total of ten (10) years which shall begin on the date of completion of the new enterprise for which the exemption is granted; however, boards of supervisors and municipal authorities, in lieu of granting the exemption for one (1) period of ten (10) years, may grant the exemption in a period of less than ten (10) years. When the initial exemption period granted is less than ten (10) years, the boards of supervisors and municipal authorities may grant a subsequent consecutive period or periods to follow the initial period of exemption, provided that the total of all periods of exemption shall not exceed ten (10) years. The date of completion of the new enterprise, from which the initial period of exemption shall begin, shall be the date on which operations of the new enterprise begin. The initial request for an exemption must be made in writing by June 1 of the year immediately following the year in which the date of completion of a new enterprise occurs. If the initial request for the exemption is not timely made, the board of supervisors or municipal authorities may grant a subsequent request for the exemption

and, in such case, the exemption shall begin on the anniversary date of completion of the enterprise in the year in which the request is made and may be for a period of time extending not more than ten (10) years from the date of completion of the new enterprise. Any subsequent request for the exemption must be made in writing by June 1 of the year in which it is granted.

(2) Any board of supervisors or municipal authority which has granted an exemption for a period of less than ten (10) years may grant subsequent periods of exemption to run consecutively with the initial exemption period, or a subsequently granted exemption period, but in no case shall the total of the exemption periods granted for a new enterprise exceed ten (10) years. Any consecutive period of exemption shall be granted by entry of an order by the board or the authority granting the consecutive exemption on its minutes, reflecting the granting of the consecutive exemption period and the dates upon which such consecutive exemption period begins and expires. The entry of this order granting the consecutive period of exemption shall be made before the expiration of the exemption period immediately preceding the consecutive exemption period being granted.

(3) The new enterprises which may be exempt are enumerated as and limited to the following, as determined by the Department of Revenue:

(a) Warehouse and/or distribution centers;

(b) Manufacturing, processors and refineries;

(c) Research facilities;

(d) Corporate regional and national headquarters meeting minimum criteria established by the Mississippi Development Authority;

(e) Movie industry studios meeting minimum criteria established by the Mississippi Development Authority;

(f) Air transportation and maintenance facilities meeting minimum criteria established by the Mississippi Development Authority;

(g) Recreational facilities that impact tourism meeting minimum criteria established by the Mississippi Development Authority;

(h) Data/information processing enterprises meeting minimum criteria established by the Mississippi Development Authority;

(i) Technology intensive enterprises or facilities meeting criteria established by the Mississippi Development Authority;

(j) Health care industry facilities as defined in Section 57-117-3; and

(k) Telecommunications enterprises meeting minimum criteria established by the Mississippi Development Authority. The term "telecommunications enterprises" means entities engaged in the creation, display, management, storage, processing, transmission or distribution for compensation of images, text, voice, video or data by wire or by wireless means, or entities engaged in the construction, design, development, manufacture, maintenance or distribution for compensation of devices, products, software or structures used in the above activities. Companies organized to do business as commercial broadcast radio stations, television stations or news organizations primarily serving in-state markets shall not be included within the definition of the term "telecommunications enterprises."

[From and after July 1, 2022, this section shall read as follows:]

(1) County boards of supervisors and municipal authorities are hereby authorized and empowered, in their discretion, to grant exemptions from ad valorem taxation, except state ad valorem taxation; however, such governing authorities shall not exempt ad valorem taxes for school district purposes on tangible property used in, or necessary to, the operation of the manufacturers and other new enterprises enumerated by classes in this section, except to the extent authorized in Sections 27-31-104 and 27-31-105(2), nor shall they exempt from ad valorem taxes the products of the manufacturers or other new enterprises or automobiles and trucks belonging to the manufacturers or other new enterprises operating on and over the highways of the State of Mississippi. The time of such exemption shall be for a period not to exceed a total of ten (10) years which shall begin on the date of completion of the new enterprise for which the exemption is granted; however, boards of supervisors and municipal authorities, in lieu of granting the exemption for one (1) period of ten (10) years, may grant the exemption in a period of less than ten (10) years. When the initial exemption period granted is less than ten (10) years, the boards of supervisors and municipal authorities may grant a subsequent consecutive period or periods to follow the initial period of exemption, provided that the total of all periods of exemption shall not exceed ten (10) years. The date of completion of the new enterprise, from which the initial period of exemption shall begin, shall be the date on which operations of the new enterprise begin. The initial request for an exemption must be made in writing by June 1 of the year immediately following the year in which the date of completion of a new enterprise occurs. If the initial request for the exemption is not timely made, the board of supervisors or municipal authorities may grant a subsequent request for the exemption and, in such case, the exemption shall begin on the anniversary date of completion of the enterprise in the year in which the request is made and may be for a period of time extending not more than ten (10) years from the date of completion of the new enterprise. Any subsequent request for the exemption must be made in writing by June 1 of the year in which it is granted.

(2) Any board of supervisors or municipal authority which has granted an exemption for a period of less than ten (10) years may grant subsequent periods of exemption to run consecutively with the initial exemption period, or a subsequently granted exemption period, but in no case shall the total of the exemption periods granted for a new enterprise exceed ten (10) years. Any consecutive period of exemption shall be granted by entry of an order by the board or the authority granting the consecutive exemption on its minutes, reflecting the granting of the consecutive exemption period and the dates upon which such consecutive exemption period begins and expires. The entry of this order granting the consecutive period of exemption shall be

made before the expiration of the exemption period immediately preceding the consecutive exemption period being granted.

(3) The new enterprises which may be exempt are enumerated as and limited to the following, as determined by the Department of Revenue:

(a) Warehouse and/or distribution centers;

(b) Manufacturing, processors and refineries;

(c) Research facilities;

(d) Corporate regional and national headquarters meeting minimum criteria established by the Mississippi Development Authority;

(e) Movie industry studios meeting minimum criteria established by the Mississippi Development Authority;

(f) Air transportation and maintenance facilities meeting minimum criteria established by the Mississippi Development Authority;

(g) Recreational facilities that impact tourism meeting minimum criteria established by the Mississippi Development Authority;

(h) Data/information processing enterprises meeting minimum criteria established by the Mississippi Development Authority;

(i) Technology intensive enterprises or facilities meeting criteria established by the Mississippi Development Authority; and

(j) Telecommunications enterprises meeting minimum criteria established by the Mississippi Development Authority. The term "telecommunications enterprises" means entities engaged in the creation, display, management, storage, processing, transmission or distribution for compensation of images, text, voice, video or data by wire or by wireless means, or entities engaged in the construction, design, development, manufacture, maintenance or distribution for compensation of devices, products, software or structures used in the above activities. Companies organized to do business as commercial broadcast radio stations, television stations or news organizations primarily serving in-state markets shall not be included within the definition of the term "telecommunications enterprises."

SOURCES: Codes, 1930, § 3109; 1942, § 9703; Laws, 1922, ch. 139; Laws, 1928, chs. 10, 100; Laws, 1928, Ex. ch. 57; Laws, 1930, ch. 67; Laws, 1932, ch. 293; Laws, 1936, ch. 159; Laws, 1936, 2nd Ex. ch. 17; Laws, 1938, Ex. ch. 76; Laws, 1942, ch. 132; Laws, 1944, ch. 135; Laws, 1946, chs. 208, 448; Laws, 1948, ch. 439; Laws, 1950, ch. 528; Laws, 1952, chs. 420 (§ 1), 422; Laws, 1954, chs. 363, 382; Laws, 1956, chs. 202 (§§ 1, 2), 203 (§§ 1, 2); Laws, 1958, chs. 566 (§ 1), 567 (§§ 1, 2); Laws, 1960, ch. 467; Laws, 1961, 2nd Ex. ch. 7, § 1; Laws, 1962, ch. 269, § 1; Laws, 1963, 1st Ex Sess. ch. 35, § 1; Laws, 1964, ch. 520, § 1; Laws, 1968, ch. 583, § 1; Laws, 1970, ch. 545, § 1; Laws, 1972, ch. 495, § 1; Laws, 1978, ch. 514, § 4; Laws, 1981, ch. 523, § 1; Laws, 1986, ch. 407, § 1; Laws, 1987, ch. 411, § 1; Laws, 1989, ch. 524, § 15; Laws, 1990, ch. 502, § 3; Laws, 1990 Ex Sess, ch. 71, § 1; Laws, 1992, ch. 518, § 2; Laws, 1994, ch. 571, § 1; Laws, 1994, ch. 558, § 18; Laws, 1995, ch. 355, § 1; Laws, 1995, ch. 527, § 1; Laws, 2000, ch. 591, § 1; Laws, 2005, ch. 513, § 1; Laws, 2005, 3rd Ex Sess, ch. 1, § 62; Laws, 2012, ch. 520, § 7, eff from and after July 1, 2012.

Editor's Note — Laws of 1989, ch. 524, § 36, provides as follows:

"SECTION 36. The repeal or amendment of this act shall not reduce the terms of any tax reduction, special tax incentive or financial assistance agreed upon pursuant to official action by the Department of Economic Development, the State Tax Commission or other appropriate agency of the state or political subdivision thereof prior to the effective date of such repeal or amendment."

Laws of 1994, ch. 558, § 24, provides as follows:

"SECTION 24. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1995, ch. 527, § 4, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Constitutional authorization of tax exemption of new enterprises, see Miss. Const. Art. 7, § 182.

Municipalities encouraging establishment of industry generally, see § 21-19-43.

Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue of the Department of Revenue, see § 27-3-4.

Additional new enterprises not enumerated in this section which may also be exempt, see § 27-31-104.

Exemptions with respect to additions to or expansions of facilities enumerated in this section, see § 27-31-105.

Obtaining exemptions, see § 27-31-107.

County ad valorem tax levy for payment of bonds or notes and for other authorized purposes, see § 27-39-329.

Applicability of this section to taxability of municipal industrial enterprise projects, see § 57-41-13.

JUDICIAL DECISIONS

1. In general.
2. Particular factories and enterprises.
3. — Public utilities.

1. In general.

A municipality lacked authority to grant a new enterprise exemption from ad valorem property taxes, as provided by § 27-31-101, with respect to real property where the application for the exemption, pursuant to § 27-31-107, did not specifically include real property. City of Jackson v. Sly, 343 So. 2d 473 (Miss. 1977).

The federal court did not have jurisdiction of an action by a foreign corporation to enjoin the state administrative officers from assessing its real and personal property for ad valorem taxes during years in which it claimed exemption as a new enterprise. Gully v. Interstate Natural Gas Co., 292 U.S. 16, 54 S. Ct. 565, 78 L. Ed. 1088 (1934).

The exemption referred to, as contained in previous similar enactment of this section [Code 1942, § 9703] (Laws 1922, chap. 138; Laws 1926, chap. 172) applies to foreign corporations. Interstate Natural Gas Co. v. Gully, 4 F. Supp. 697 (S.D. Miss. 1933), rev'd on other grounds, 292 U.S. 16, 54 S. Ct. 565, 78 L. Ed. 1088 (1934).

Private corporation's capital, invested in evidences of debt bearing not more than 6% interest, is not taxable. Equitable Fin. Co. v. Board of Supvrs., 146 Miss. 734, 111 So. 871 (1927).

Rebuilt manufacturing plant not entitled to exemption as new enterprise. Morris v. Riley, 135 Miss. 1, 99 So. 466 (1924).

Exemption of a manufacturing plant includes only those things essential and necessary and used directly in its operation. Adams County v. National Box Co., 125 Miss. 598, 88 So. 168 (1921).

2. Particular factories and enterprises.

Garment factory organized while the Balance Agriculture with Industry statute was in force was entitled to exemption from all ad valorem taxes, both state and local, and not exemption from ad valorem taxes except state ad valorem taxes, since the legislature intended that there should be no discrimination in favor of the Balance Agriculture with Industry corporations against others organized while that statute was in force. Board of Supvrs. v. Mid-South Mfg. Co., 190 Miss. 812, 1 So. 2d 802 (1941); Meador v. Mac-Smith Garment Co., 188 Miss. 98, 191 So. 129 (1940).

Exemption granted to new ice factory from state and county ad valorem taxation held not to exempt company's property from ad valorem tax for levee purposes. Hollandale Ice Co. v. Board of Supvrs., 171 Miss. 515, 157 So. 689 (1934).

Former statute exempting permanent additions to existing hotels from taxation was strictly construed against exemption and most favorably to taxing power. Leaf Hotel Corp. v. City of Hattiesburg, 168 Miss. 304, 150 So. 779 (1933).

Fourth story added to existing three-story hotel held not "permanent addition" within tax exemption statute. Leaf Hotel Corp. v. City of Hattiesburg, 168 Miss. 304, 150 So. 779 (1933).

Cottonseed grown within state and owned by oil mills for manufacture held exempt from taxation for two years after being harvested. Clay County v. Hogan, 145 Miss. 857, 111 So. 373 (1927).

A factory merely making paper bags from prepared paper is not exempt from taxation. Pineland Bag Corp. v. Riley, 142 Miss. 574, 107 So. 554 (1926).

Purchaser of meat packing plant of insolvent corporation held entitled only to unexpired exemption. Robertson v. Mississippi Packing Co., 134 Miss. 837, 98 So. 539 (1924).

3. — Public utilities.

A natural gas company which was exempt from state and county taxation as a new enterprise was not exempt from levee district taxes. Gully v. Memphis Natural Gas Co., 82 F.2d 150 (5th Cir. 1936), cert. denied, 298 U.S. 688, 56 S. Ct. 956, 80 L. Ed. 1407 (1936).

A foreign corporation which laid its pipelines in the state for the sale and distribution of natural gas as a wholesale seller by private contract to municipalities and corporations, was entitled to the statutory exemption from taxation accorded new enterprises, as against the contention that the statute, in using the words "public utility" used them in the sense of property devoted and dedicated to the public use. Gully v. Interstate Natural Gas Co., 82 F.2d 145 (5th Cir. 1936), cert. denied, 298 U.S. 688, 56 S. Ct. 958, 80 L. Ed. 1407 (1936).

Where corporation was entitled to tax exemption as new enterprise of public utility, purchaser of corporation's property at foreclosure sale held entitled to similar exemption for balance of five-year exemption period. Gully v. Wilmut Gas & Oil Co., 174 Miss. 794, 165 So. 620 (1936).

County supervisors' order granting statutory tax exemption to certain enterprises of public utility held not incomplete where, under statute, order became effective within specified time in absence of petition for election, notwithstanding statutory provision for order declaring it to be supervisors' "intention" to grant tax exemption. Gully v. Wilmut Gas & Oil Co., 174 Miss. 794, 165 So. 620 (1936).

Statutory tax exemption to new enterprises of public utility held not waived merely by delay in claiming exemption or by antecedent payment of taxes, provided claim is made within five-year exemption period. Gully v. Wilmut Gas & Oil Co., 174 Miss. 794, 165 So. 620 (1936).

Statutes under which county supervisors' order granting statutory tax exemption to new enterprises of public utility becomes effective within specified time in absence of petition for election held not unconstitutional as granting legislative power. Gully v. Wilmut Gas & Oil Co., 174 Miss. 794, 165 So. 620 (1936).

Applicable to a foreign corporation engaged in the distribution of natural gas although it was not a public service corporation or public utility. Memphis Natural Gas Co. v. Gully, 8 F. Supp. 169 (S.D. Miss. 1934), modified, 82 F.2d 150 (5th Cir. 1936), cert. denied, 298 U.S. 688, 56 S. Ct. 956, 80 L. Ed. 1407 (1936), cert. denied, 298 U.S. 688, 56 S. Ct. 958, 80 L. Ed. 1407 (1936).

The statute as previously enacted (Laws, 1922, chap. 138; Laws of 1926, chap. 172), does not limit grants of exemptions to distribution by conduit and pipelines of natural gas to the ultimate consumer but applies to one engaged in the transportation and distribution of natural gas as a wholesale distributor. Interstate Natural Gas Co. v. Gully, 4 F. Supp. 697 (S.D. Miss. 1933), rev'd on other grounds, 292 U.S. 16, 54 S. Ct. 565, 78 L. Ed. 1088 (1934).

ATTORNEY GENERAL OPINIONS

Unexpired exemptions from capital improvements tax are transferable to new owners of enterprise so long as they continue to carry on original business activity that had qualified for exemption. Brown, August 11, 1992, A.G. Op. #92-0612.

Prohibition of granting tax exemption for "additions or improvements" to already exempt property should be read in context of its insertion into Miss. Code Section 27-31-101; it applies to exemptions granted before July 1, 1989, some of which were for more than ten years. Williams, Jan. 14, 1993, A.G. Op. #92-0872.

Miss. Code Section 27-31-101 authorizes governing authorities of municipalities and counties, in their discretion, to grant exemptions from ad valorem taxes for new enterprises, even though same property previously received exemption as different business. McWilliams, Feb. 3, 1993, A.G. Op. #92-1015.

Section 27-31-101, is not retroactive; that is, the legal standard prior to its effective date is unchanged. However, the legal standard is changed as of the effective date of the amendment. The practical effect is that any improvements completed within 270 days prior to the effective date of Section 27-31-101 are eligible to apply for a tax exemption. Mullins, March 24, 1995, A.G. Op. #95-0170.

Under Section 27-31-101, a City may not grant a tax exemption to an industry that has been in operation since 1992 because of its failure to comply with the statutory requirement that application for such exemption be made with the municipality within the prescribed time period. Smith, October 4, 1995, A.G. Op. #95-0647.

Section 27-31-101, provides that if a new enterprise seeks an exemption, that exemption shall not exceed ten years, and shall begin on the date of completion of the new enterprise for which the exemption is granted. The date of completion for the new enterprise is the date on which the operations of the new enterprise begin. Greco, March 8, 1996, A.G. Op. #96-0097.

Company policies concerning hiring or employees' salaries or benefits may be taken into consideration by the governing authorities in deciding whether to grant a tax exemption pursuant to Section 27-31-101 or 27-31-105, however, they do not prohibit governing authorities from granting tax exemptions to businesses or industries who hire employees through temporary job employment agencies. Coleman, March 29, 1996, A.G. Op. #96-0175.

For an expansion completed in 1995 the application for exemption from 1996 taxes would have to be made some time before February 1st of 1997. Pursuant to Section 27-31-107 the Tax Commission has the authority to certify whether any exemption granted by a local governing body is eligible for such an exemption under 27-31-101 and following of the Code. Slade, May 10, 1996, A.G. Op. #96-0260.

The governing authority of a municipality that annexes an area may grant an ad valorem tax exemption to a "new enterprise" that has been exempted from ad valorem taxation by the County prior to its annexation, but the exemption should not run more than the ten year period from the date of its completion as authorized in Section 27-31-101. Stockton, September 20, 1996, A.G. Op. #96-0620.

An industry exempt under Miss. Code Section 27-31-101 is not exempt from paying the one mill ad valorem tax under Miss. Code Section 27-39-329 and is not exempt from a tax levy for junior college support under Miss. Code Section 37-29-141. Jones, Aug. 15, 1997, A.G. Op. #97-0418.

Unless the Department of Economic and Community Development establishes as a criterion for tax exemption under this section a feasibility study on the impact of a recreational facility on tourism, such a study would not be required. Palmer, Nov. 14, 1997, A.G. Op. #97-0706.

A contractual provision granting a tax exemption is unenforceable to the extent that the exemption exceeds the constitutional and statutory limits for such exemptions. Brand, June 12, 1998, A.G. Op. #98-0327.

A hotel or motel with a spa can constitute a recreational facility that impacts tourism, so as to allow a municipality or county to authorize a partial exemption from ad valorem taxation, but whether a particular hotel or motel constitutes a recreational facility is a factual determination to be made by the governing local authority and the State Tax Commission. Bowman, Sept. 21, 2001, A.G. Op. #01-0542.

Section 27-39-329(2)(c) precludes exemption of tax levies required under the section, and an industry exempt pursuant to Section 27-31-101 is not exempt from the one mill ad valorem tax authorized by Section 27-39-329. Burrow, Jr., Nov. 9, 2001, A.G. Op. #01-0664.

A tax levy for the support of a junior college as mandated by Section 37-29-141 is not exempted pursuant to Section 27-31-101. Burrow, Jr., Nov. 9, 2001, A.G. Op. #01-0664.

A municipality may not exempt a homeowner from paying property taxes if the municipality is unable to solve a problem with rainwater coming from a cemetery and getting into his or her home. Jones, Apr. 5, 2002, A.G. Op. #02-0149.

Any exemption under the statute is discretionary with the county board of supervisors. Trapp, Jr., May 16, 2002, A.G. Op. #02-0245.

Whether an enterprise constitutes a "recreational facility that impacts tourism" is a factual determination which the governing authorities and the State Tax Commission must make; further, in making this determination the governing authorities should be mindful that tax exemptions should be strictly construed in favor of taxation and against exemption and that the burden is on the taxpayer to prove it is eligible for exemption. Rogers, June 23, 2003, A.G. Op. 03-0295.

A Board of Supervisors may only consider an application for exemption currently before it, if the application is filed by June 1 of the year following the year of completion. Rogers, June 23, 2003, A.G. Op. 03-0295.

Where the application of a company for an exemption was not filed within 270 days of the final date of annexation of the area including the company's facilities, the governing authorities of the city could not consider the application since it was not timely filed. Carter, July 18, 2003, A.G. Op. 03-0341.

A board of supervisors may not consider an application for extension of exemption from ad valorem taxes if the application is not received in time for the board to act before the initial term expires or if the application is received after the expiration of the initial term. Williams, Oct. 3, 2003, A.G. Op. 03-0528.

An enterprise wishing to claim an ad valorem tax exemption for additions to or expansion of facilities or replacement of equipment pursuant to § 27-31-105 must comply with the extension procedures required in this section. Williams, Oct. 3, 2003, A.G. Op. 03-0528.

If an industry continues as originally exempted, new owners are not required to make application to the board of supervisors for a continuation of the exemption. Seal, July 28, 2004, A.G. Op. 04-0328.

Due to the fact that a corporation missed the deadline for filing for the ten year exemption, the application may not be considered by the county or municipality for the remaining nine years. Moss, Oct. 15, 2004, A.G. Op. 04-0486.

An ad valorem property tax exemption granted to a factory or plant under Miss. Code Ann. § 27-31-101 may be canceled by a municipality or county a minimum of 12 months after manufacturing ceases. Ross, February 23, 2007, A.G. Op. #07-00080, 2007 Miss. AG LEXIS 28.

Whether a proposal constitutes a "project" for purposes of qualifying for a "fee-in-lieu" of ad valorem tax under Miss. Code Ann. § 27-31-104 is a factual determination which must be made by the Mississippi Development Authority. A Project qualifying for fee-in-lieu is entitled to a single 10-year exemption based on the completion of the single qualifying project. Welch, February 2, 2007, A.G. Op. #07-00013, 2007 Miss. AG LEXIS 9.

RESEARCH REFERENCES

ALR. What constitutes manufacturing and who is a manufacturer under tax laws. 17 A.L.R.3d 7.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 91, 93, 194, 195, 288 et seq.

71 Am. Jur. 2d, State and Local Taxation § 677 et seq.

72 Am. Jur. 2d, State and Local Taxation §§ 719, 763, 764.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 161, 162 (tax exemptions of private individuals and business enterprises).

CJS. 84 C.J.S., Taxation §§ 71, 328 et seq.

Law Reviews. Ogletree, A primer concerning industrial timber litigation with emphasis upon Mississippi law. 59 Miss. L. J. 387, Fall 1989.

§ 27-31-102. Exemption of equipment used in connection with enhanced oil recovery projects.

Pipelines, dehydrators, compressors and other appurtenant equipment which are used to facilitate the transportation of carbon dioxide (CO2) in connection with an enhanced oil recovery project in the State of Mississippi shall be exempt from all ad valorem taxation, excepting taxes for school district purposes, for a period not to exceed ten (10) years from the date such pipelines and equipment are first placed into service.

SOURCES: Laws, 1984, ch. 451, § 3; Laws, 1990, ch. 478, § 1, eff from and after passage (approved March 24, 1990).

Editor's Note — Laws of 1984, ch. 451, § 4, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the oil and gas severance tax laws prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the oil and gas severance tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1990, ch. 478, § 2, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Additional exemptions of gas, mineral rights, and related production equipment, see § 27-25-721.

JUDICIAL DECISIONS

1. In general.

Equipment necessary for the transportation of CO2 located at an oil production facility was not exempt from ad valorem taxes as "producing oil equipment"; merely placing equipment necessary for transportation at a producing site does not make it producing equipment since the location of such equipment does not change its classification for taxation purposes. Shell W. E & P, Inc. v. Board of Supvrs., 624 So. 2d 68 (Miss. 1993).

ATTORNEY GENERAL OPINIONS

If pipeline transports carbon dioxide in connection with enhanced oil recovery project in Mississippi during tax year then it will be exempt from county ad valorem taxes notwithstanding that it also is used to transport CO2 into Louisiana; however, if during given tax year pipeline is used to transport CO2 exclusively to Louisiana, or is otherwise used for other purposes to exclusion of transporting CO2 in connection with enhanced oil recovery project in Mississippi, then exemption is not available to pipeline. Broome, July 7, 1992, A.G. Op. #92-0420.

§ 27-31-103. Exemption of property used in operation of new hotels or motels in certain counties.

County boards of supervisors and municipal authorities in counties bordering on the Gulf of Mexico are hereby authorized and empowered, in their discretion, to grant exemption from ad valorem taxation in addition to those enumerated in Section 27-31-101, except state ad valorem taxation, on all tangible property, excepting motor vehicles, used in or necessary to the operation of new enterprises completed after May 6, 1958, which enterprises are commonly or are usually designated as hotels, motels, or both.

In the case of the county board of supervisors, the exemption shall not exceed five (5) years and in the case of the municipal authorities, the exemption shall not exceed ten (10) years. Said exemption may be granted in the case of domestic corporations, without regard to the date of its charter, and in the case of foreign corporations, without regard to the date on which it qualified to do business, and is authorized to do business, and in the case of an individual enterprise, said exemption shall be granted from the date said work is commenced.

No new exemption from ad valorem taxes levied for school district purposes shall be granted pursuant to this section from and after July 1, 1990.

SOURCES: Codes, 1942, § 9703.5; Laws, 1958, ch. 566, § 2; Laws, 1978, ch. 514, § 5; Laws, 1990, ch. 502, § 13, eff from and after July 1, 1990.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the first paragraph was corrected by substituting "May 6, 1958" for "the effective date of this act."

Cross References — Exemptions from ad valorem tax on automobiles, see § 27-51-41.

§ 27-31-104. Grant of fee in lieu of taxes for certain projects.

[Through June 30, 2022, this section shall read as follows:]

(1) County boards of supervisors and municipal authorities are each hereby authorized and empowered to enter into an agreement with an enterprise granting, and pursuant to such agreement grant a fee-in-lieu of ad valorem taxes, including ad valorem taxes levied for school purposes, for projects totaling over One Hundred Million Dollars ($100,000,000.00). In addition to those new enterprises enumerated in Section 27-31-101, Mississippi Code of 1972, the term "projects," as used in this section, shall include:

(a) A private company (as such term is defined in Section 57-61-5, Mississippi Code of 1972) having a minimum capital investment of One Hundred Million Dollars ($100,000,000.00); or

(b) A qualified business (as such term is defined in Section 57-117-3) meeting minimum criteria established by the Mississippi Development Authority.

(2) A county board of supervisors may enter into a fee-in-lieu agreement on behalf of the county and any county school district, and a municipality may enter into such a fee-in-lieu agreement on behalf of the municipality and any municipal school district located in the municipality; however, if the project is located outside the limits of a municipality but within the boundaries of the municipal school district, then the county board of supervisors may enter into such a fee-in-lieu agreement on behalf of the school district granting a fee-in-lieu of ad valorem taxes for school district purposes.

(3) Any grant of a fee-in-lieu of ad valorem taxes shall be evidenced by a written agreement negotiated by the enterprise and the county board of supervisors and/or municipal authority, as the case may be, and given final approval by the Mississippi Development Authority as satisfying the requirements of this section.

(4) The minimum sum allowable as a fee-in-lieu shall not be less than one-third (⅓) of the ad valorem levy, including ad valorem taxes for school district purposes, and except as otherwise provided, the sum allowed shall be apportioned between the county or municipality, as appropriate, and the school districts in such amounts as may be determined by the county board of supervisors or municipal governing authority, as the case may be, however, except as otherwise provided in this section, from the sum allowed

the apportionment to school districts shall not be less than the school districts' pro rata share based upon the proportion that the millage imposed for the school districts by the appropriate levying authority bears to the millage imposed by such levying authority for all other county or municipal purposes. Any fee-in-lieu agreement entered into under this section shall become a binding obligation of the parties to the agreement, be effective upon its execution by the parties and approval by the Mississippi Development Authority and, except as otherwise provided in Section 17-25-23 or Section 57-75-33, or any other provision of law, continue in effect for a period not to exceed twenty (20) years commencing on the date that the fee-in-lieu granted thereunder begins in accordance with the agreement; however, no particular parcel of land, real property improvement or item of personal property shall be subject to a fee-in-lieu for a duration of more than ten (10) years. Any such agreement shall be binding, according to its terms, on future boards of supervisors of the county and/or governing authorities of a municipality, as the case may be, for the duration of the agreement.

(5) The fee-in-lieu may be a stated fraction or percentage of the ad valorem taxes otherwise payable or a stated dollar amount. If the fee is a fraction or percentage of the ad valorem tax levy, it shall be annually computed on all ad valorem taxes otherwise payable, including school taxes, as the same may vary from year to year based upon changes in the millage rate or assessed value and shall not be less than one-third (⅓) of that amount. If the fee is a stated dollar amount, said amount shall be the higher of the sum provided for fixed payment or one-third (⅓) of the total of all ad valorem taxes otherwise payable as annually determined during each year of the fee-in-lieu.

(6) Notwithstanding Section 27-31-111, the parties to a fee-in-lieu may agree on terms and conditions providing for the reduction, suspension, termination or reinstatement of a fee-in-lieu agreement or any fee-in-lieu period granted thereunder upon the cessation of operations by project for twelve (12) or more consecutive months or due to other conditions set forth in the agreement.

(7) For a project as defined in Section 57-75-5(f)(xxi) and located in a county that is a member of a regional economic development alliance created under Section 57-64-1 et seq., the members of the regional economic development alliance may divide the sum allowed as a fee-in-lieu in a manner as determined by the alliance agreement, and the boards of supervisors of the member counties may then apportion the sum allowed between school district purposes and all other county purposes.

(8) For a project as defined in Section 57-75-5(f)(xxvi), the board of supervisors of the county in which the project is located may negotiate with the school district in which the project is located and apportion to the school district an amount of the fee-in-lieu that is agreed upon in the negotiations different than the amount provided for in subsection (3) of this section.

(9) For a project as defined in Section 57-75-5(f)(xxviii), the annual amount of the fee-in-lieu apportioned to the county shall not be less than the

amount necessary to pay the debt service on bonds issued by the county pursuant to Section 57-75-37(3)(c).

[From and after July 1, 2022, this section shall read as follows:]

(1) County boards of supervisors and municipal authorities are each hereby authorized and empowered to enter into an agreement with an enterprise granting, and pursuant to such agreement grant a fee-in-lieu of ad valorem taxes, including ad valorem taxes levied for school purposes, for projects totaling over One Hundred Million Dollars ($100,000,000.00). In addition to those new enterprises enumerated in Section 27-31-101, Mississippi Code of 1972, the term "projects," as used in this section, shall include a private company (as such term is defined in Section 57-61-5, Mississippi Code of 1972) having a minimum capital investment of One Hundred Million Dollars ($100,000,000.00).

(2) A county board of supervisors may enter into a fee-in-lieu agreement on behalf of the county and any county school district, and a municipality may enter into such a fee-in-lieu agreement on behalf of the municipality and any municipal school district located in the municipality; however, if the project is located outside the limits of a municipality but within the boundaries of the municipal school district, then the county board of supervisors may enter into such a fee-in-lieu agreement on behalf of the school district granting a fee-in-lieu of ad valorem taxes for school district purposes.

(3) Any grant of a fee-in-lieu of ad valorem taxes shall be evidenced by a written agreement negotiated by the enterprise and the county board of supervisors and/or municipal authority, as the case may be, and given final approval by the Mississippi Development Authority as satisfying the requirements of this section.

(4) The minimum sum allowable as a fee-in-lieu shall not be less than one-third (⅓) of the ad valorem levy, including ad valorem taxes for school district purposes, and except as otherwise provided, the sum allowed shall be apportioned between the county or municipality, as appropriate, and the school districts in such amounts as may be determined by the county board of supervisors or municipal governing authority, as the case may be, however, except as otherwise provided in this section, from the sum allowed the apportionment to school districts shall not be less than the school districts' pro rata share based upon the proportion that the millage imposed for the school districts by the appropriate levying authority bears to the millage imposed by such levying authority for all other county or municipal purposes. Any fee-in-lieu agreement entered into under this section shall become a binding obligation of the parties to the agreement, be effective upon its execution by the parties and approval by the Mississippi Development Authority and, except as otherwise provided in Section 17-25-23 or Section 57-75-33, or any other provision of law, continue in effect for a period not to exceed twenty (20) years commencing on the date that the fee-in-lieu granted thereunder begins in accordance with the agreement; however, no

particular parcel of land, real property improvement or item of personal property shall be subject to a fee-in-lieu for a duration of more than ten (10) years. Any such agreement shall be binding, according to its terms, on future boards of supervisors of the county and/or governing authorities of a municipality, as the case may be, for the duration of the agreement.

(5) The fee-in-lieu may be a stated fraction or percentage of the ad valorem taxes otherwise payable or a stated dollar amount. If the fee is a fraction or percentage of the ad valorem tax levy, it shall be annually computed on all ad valorem taxes otherwise payable, including school taxes, as the same may vary from year to year based upon changes in the millage rate or assessed value and shall not be less than one-third (⅓) of that amount. If the fee is a stated dollar amount, said amount shall be the higher of the sum provided for fixed payment or one-third (⅓) of the total of all ad valorem taxes otherwise payable as annually determined during each year of the fee-in-lieu.

(6) Notwithstanding Section 27-31-111, the parties to a fee-in-lieu may agree on terms and conditions providing for the reduction, suspension, termination or reinstatement of a fee-in-lieu agreement or any fee-in-lieu period granted thereunder upon the cessation of operations by project for twelve (12) or more consecutive months or due to other conditions set forth in the agreement.

(7) For a project as defined in Section 57-75-5(f)(xxi) and located in a county that is a member of a regional economic development alliance created under Section 57-64-1 et seq., the members of the regional economic development alliance may divide the sum allowed as a fee-in-lieu in a manner as determined by the alliance agreement, and the boards of supervisors of the member counties may then apportion the sum allowed between school district purposes and all other county purposes.

(8) For a project as defined in Section 57-75-5(f)(xxvi), the board of supervisors of the county in which the project is located may negotiate with the school district in which the project is located and apportion to the school district an amount of the fee-in-lieu that is agreed upon in the negotiations different than the amount provided for in subsection (3) of this section.

(9) For a project as defined in Section 57-75-5(f)(xxviii), the annual amount of the fee-in-lieu apportioned to the county shall not be less than the amount necessary to pay the annual debt service on bonds issued by the county pursuant to Section 57-75-37(3)(c).

SOURCES: Laws, 1989, ch. 524, § 16; Laws, 1990 Ex Sess, ch. 71, § 2; Laws, 2007, ch. 303, § 28; Laws, 2010, ch. 301, § 6; Laws, 2012, ch. 520, § 8; Laws, 2013, 1st Ex Sess, ch. 1, § 9; Laws, 2016, 1st Ex Sess, ch. 1, § 21; Laws, 2016, ch. 483, § 2, eff from and after July 1, 2016.

Editor's Note — Laws of 1989, ch. 524, § 36, provides as follows:

"SECTION 36. The repeal or amendment of this act shall not reduce the terms of any tax reduction, special tax incentive or financial assistance agreed upon pursuant to official action by the Department of Economic Development, the State Tax Commission or other appropriate agency of the state or political subdivision thereof prior to the effective date of such repeal or amendment."

Amendment Notes — The 2016 1st Extraordinary Session amendment, in both versions of the section, inserted "each," "enter into an agreement with an enterprise granting, and pursuant to such agreement," and "ad valorem" two times in the first sentence of (1); added (2) and (6), and redesignated the remaining subsections accordingly; substituted present (3) for former (2), which read: "The fee-in-lieu shall be negotiated by and given final approval by the Mississippi Development Authority"; in (4), substituted the present second sentence for the former last sentence, which read: "Except as otherwise provided in Section 57-75-33, the agreement shall be for a term of not more than ten (10) years" and added the last sentence; and in the first version of the section, made a minor stylistic change at the end of (1)(a).

The 2016 Regular Session amendment, in both versions of the section, rewrote the second sentence of (4), which read: "Any fee-in-lieu agreement entered into in under this section shall become a binding obligation of the parties to the agreement, be effective upon its execution by the parties and approval by the Mississippi Development Authority and continue until expiration of the fee-in-lieu granted under the agreement; however, the term for which the fee-in-lieu may be granted under the agreement shall not exceed a single period of ten (10) years commencing on the date specified in accordance with the agreement, except as otherwise provided in Section 17-25-23 or Section 57-75-33, or any other provision of law."

Cross References — Counties and municipalities authorized to enter into fee-in-lieu agreements with certain approved business enterprises, see § 17-25-23.

Exemption of new enterprises from ad valorem taxes, see § 27-31-101.

Exemption from ad valorem tax for additional or expanded properties, see § 27-31-105.

Mississippi Development Authority generally, see § 57-1-1 et seq.

Counties and municipalities authorized to enter into fee in lieu of ad valorem taxes agreements, see § 57-75-33.

ATTORNEY GENERAL OPINIONS

Project must contain minimum one hundred million dollars ($100,000,000.00) capital investment, and fact that portions of project may be separately and independently owned does not conflict with purposes or intent of statute. Holladay, August 22, 1990, A.G. Op. #90-0658.

After deducting the shares of the school districts involved, the balance of a fee in lieu of ad valorem taxes may be allocated to any one or all of the county funds at the discretion of the board of supervisors. Leggett, January 22, 1999, A.G. Op. #99-0012.

As the fee in lieu of taxes is based upon the initial capital investment and not upon any assessed valuation, it logically follows that the amount of the fee, once negotiated and approved by the Department of Economic Development, is not affected by subsequent increases or decreases in the assessed valuation thereof and is not affected by subsequent changes in the millage; thus, the amount of the fee so negotiated is not affected by subsequent changes in the assessed valuation thereof nor by subsequent changes in millage. Bailey, March 26, 1999, A.G. Op. #99-0134.

It is the municipality that is authorized and empowered to grant a fee in lieu of taxes with regard to a municipal separate school district. Pittman, Nov. 10, 2000, A.G. Op. #2000-0670.

Although the statute requires the minimum sum allowed as a fee to be at least one-third of the ad valorem levy, this does not affect the valuation of property for purposes of determining the school general obligation bond limit; the total assessed value of property must be used in determining the 15 percent bonded debt limit. Akers, Feb. 9, 2001, A.G. Op. #2001-0042.

A county has the authority to reduce the assessed value of real property located within its jurisdiction based on a decrease in appraised value. Sumners, May 21, 2004, A.G. Op. 04-0172.

The fee in lieu of taxes may increase if the fee has been negotiated as a percentage or fraction of the ad valorem levy and there is a subsequent change in the assessed valuation of the property or a subsequent change in the millage. This remains true whether the increase in the assessed valuation is due to an increase in profitability or some other factual determination. Sumners, May 21, 2004, A.G. Op. 04-0172.

Section 27-31-104 requires a county board of supervisors to apportion the sum allowed between the county and the county school district in a pro-rata amount as determined by the amount of dollars generated by the county millage times the net assessed value of the respective levies, as long as all of the requirements of the statute are satisfied. Hodges, Nov. 18, 2005, A.G. Op. 05-0533.

Whether a proposal constitutes a "project" for purposes of qualifying for a "fee-in-lieu" of ad valorem tax under Miss. Code Ann. § 27-31-104 is a factual determination which must be made by the Mississippi Development Authority. A Project qualifying for fee-in-lieu is entitled to a single 10-year exemption based on the completion of the single qualifying project. Welch, February 2, 2007, A.G. Op. #07-00013, 2007 Miss. AG LEXIS 9.

§ 27-31-105. Additions to or expansions of facilities or properties or replacement of equipment used in connection with certain enterprises.

(1) Any person, firm or corporation who owns or operates a manufacturing or other enterprise of public utility as enumerated in Section 27-31-101 and who makes additions to or expansions of the facilities or properties or replaces equipment used in connection with or necessary to the operation of such enterprise may be granted an exemption from ad valorem taxation, except state ad valorem taxation, upon each addition to or expansion of the facility or property or replacement of equipment, within the discretion of the county board of supervisors and municipal authorities; however, such governing authorities shall not exempt ad valorem taxes for school district purposes on such additions or expansions of the facility or property, or replacement of equipment. In order to obtain the exemptions authorized by this section, a person, firm or corporation shall follow the same procedure prescribed for obtaining an exemption on a new enterprise, except as otherwise provided in this section. For any additions, expansions or replacements with reference to any particular new enterprise, which have been completed during any calendar year, only one (1) request must be made for the exemptions sought for the additions, expansions or replacements. The time of the exemption shall commence from the date of completion of the additions, expansions or replacements, and shall extend for a period not to exceed ten (10) years thereafter; however, boards of supervisors and municipal authorities, in lieu of granting the exemption for one (1) period of ten (10) years, may grant the exemption in consecutive periods of five (5) years each, but the total of such consecutive periods shall not exceed ten (10) years. The initial request for an exemption must be made in writing by June 1 of the year immediately following the year in which the additions, expansions or replacements are completed. If the initial request for the exemption is not timely made, the board of supervisors or municipal authorities may grant a subsequent request for the exemption and, in such case, the exemption shall begin on the anniversary date of completion

of the additions, expansions or replacements in the year in which the request is made and may be for a period of time extending not more than ten (10) years from the date of completion of the additions, expansions or replacements. Any subsequent request for the exemption must be made in writing by June 1 of the year in which it is granted.

(2) For expansions of facilities or properties or replacement of equipment, county boards of supervisors and municipal authorities may grant a fee in lieu of taxes in the same manner, to the same extent, and with the same qualifying threshold as provided for projects under Section 27-31-104, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 9706.5; Laws, 1952, ch. 420, § 5; Laws, 1960, ch. 468; Laws, 1961, 2nd Ex. ch. 5, § 1; Laws, 1986, ch. 407, § 2; Laws, 1989, ch. 524, § 17; Laws, 1992, ch. 518, § 3; Laws, 1994, ch. 571, § 2; Laws, 1995, ch. 544, § 1; Laws, 2000, ch. 591, § 2; Laws, 2006, ch. 459, § 1, eff from and after passage (approved Mar. 23, 2006.)

Editor's Note — Laws of 1989, ch. 524, § 36, provides as follows:

"SECTION 36. The repeal or amendment of this act shall not reduce the terms of any tax reduction, special tax incentive or financial assistance agreed upon pursuant to official action by the Department of Economic Development, the State Tax Commission or other appropriate agency of the state or political subdivision thereof prior to the effective date of such repeal or amendment."

Cross References — Exemption of new enterprises from ad valorem taxes, see § 27-31-101.

JUDICIAL DECISIONS

1. In general.

The provisions of Code 1972 § 27-31-105, § 27-31-111, and § 27-31-113, which define the type of exemption and specify when it may be suspended or cancelled, indicate that the exemption for additional or expanded manufacturing facilities was intended for new but integrated parts of a manufacturing concern, which exemption is susceptible to revocation if the new addition ceases to be a part of the manufacturing process; hence the exemption under Code 1972 § 27-31-105 for additional or expanded manufacturing facilities is lost if the manufacturer leases the new building to another corporation for use as a free port warehouse; however, upon loss of the exemption, the manufacturer may not be assessed back taxes for the amount of the exemptions previously given, since the suspension and cancellation provisions of Code § 27-31-111 and § 27-31-113 are prospective rather than retrospective and should not be construed as penal in nature. City of Jackson v. DeSoto, Inc., 350 So. 2d 684 (Miss. 1977).

ATTORNEY GENERAL OPINIONS

Although a company did not own $1.5 million in machinery, equipment, or other tangible property at the time the initial exemption was granted, it represented to the Board of Supervisors, through its application for exemption, that it possessed $1.5 million in such property. Therefore, the company would be responsible for ad valorem taxes of additional equipment or machinery purchased after the initial exemption if it had not made application and been granted exemption pursuant to Section 27-31-105. Lee, October 11, 1995, A.G. Op. #95-0570.

An enterprise wishing to claim an ad valorem tax exemption for additions to or expansion of facilities or replacement of equipment pursuant to this section must comply with the extension procedures required in § 27-31-101. Williams, Oct. 3, 2003, A.G. Op. 03-0528.

§ 27-31-107. Applications for exemptions.

Any person, firm or corporation claiming exemptions from municipal or county ad valorem taxation as provided in Sections 27-31-101 through 27-31-117 shall first file an application with the governing authorities of the municipality or the county board of supervisors, as the case may be, on or before June 1 of the year following the year of completion of the new enterprise or completion of the expansion or addition; however, no such application shall be required for, nor shall this section otherwise apply to, any fee-in-lieu of ad valorem taxation, granted pursuant to Section 27-31-104 or 27-31-105(2). Each copy shall be subscribed and sworn to by the individual making the application or, if a firm or corporation, by an officer or person duly authorized to do so. In the application, full information shall be given as to the property proposed to be exempted, the kind of articles to be manufactured, and the date from which exemption is claimed. Each application shall also show an itemized listing of the true value of all such property sought to be exempted. The governing authorities of the municipality or county board of supervisors may, by resolution spread on its minutes, approve such application for all or any part of the property sought to be exempted and for all or any part of the authorized period of exemption. The resolution of approval shall also have an itemized listing of the true value of all property to be exempted. The application, together with the resolution of approval, shall be forwarded to the Department of Revenue within thirty (30) days from the date of the resolution. The department shall proceed to investigate the matter and determine whether the property is eligible for the exemption. After investigation of the eligibility of the property, the department shall certify its determination to the governing authorities of the municipality or the county board of supervisors. If such property sought to be exempted is not eligible for such exemption, as above set forth, the Department of Revenue shall so certify. If the Department of Revenue certifies that the applicant is eligible for an exemption, it shall be discretionary with the board of supervisors or municipal authorities as to whether they grant the exemption, but in no event shall an exemption be granted if the Department of Revenue certifies that the applicant is not eligible for an exemption. The original copy of the application for exemption shall be returned to the governing authorities of the municipality or the county board of supervisors, as the case may be.

SOURCES: Codes, 1930, § 3111; 1942, § 9705; Laws, 1930, ch. 67; Laws, 1952, ch. 420, § 3; Laws, 1989, ch. 524, § 18; Laws, 1991, ch. 385 § 1; Laws, 1993, ch. 513, § 1; Laws, 1994, ch. 571, § 3; Laws, 2002, ch. 346, § 1; Laws, 2016, 1st Ex Sess, ch. 1, § 22, eff from and after passage (approved Feb. 8, 2016.)

Editor's Note — Laws of 1989, ch. 524, § 36, provides as follows:

"SECTION 36. The repeal or amendment of this act shall not reduce the terms of any tax reduction, special tax incentive or financial assistance agreed upon pursuant to official action by the Department of Economic Development, the State Tax Commission or other appropriate agency of the state or political subdivision thereof prior to the effective date of such repeal or amendment."

Laws of 1993, ch. 513, § 9, effective July 1, 1993, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Section 57-1-54 provides that the term "Mississippi Department of Economic Development" appears in any law the same shall mean the Department of Economic and Community Development.

Amendment Notes — The 2016 1st Extraordinary Session substituted "Department of Revenue" for "State Tax Commission" and "department" for "commission" throughout the section; and added "however, no such application . . . pursuant to Section 27-31-104 or 27-31-105(2)" at the end of the first sentence.

Cross References — Mississippi agricultural and industrial board generally, see §§ 57-1-1 et seq. and 57-3-1 et seq.

JUDICIAL DECISIONS

1. In general.

A municipality lacked authority to grant a new enterprise exemption from ad valorem property taxes, as provided by § 27-31-101, with respect to real property where the application for the exemption, pursuant to § 27-31-107, did not specifically include real property. City of Jackson v. Sly, 343 So. 2d 473 (Miss. 1977).

ATTORNEY GENERAL OPINIONS

For an expansion completed in 1995 the application for exemption from 1996 taxes would have to be made some time before February 1st of 1997. Pursuant to Section 27-31-107 the Tax Commission has the authority to certify whether any exemption granted by a local governing body is eligible for such an exemption under Section 27-31-101 and following of the Code. Slade, May 10, 1996, A.G. Op. #96-0260.

A mayor and board of aldermen did not have authority to approve an initial application for tax exemptions retroactively. Dreher, March 17, 2000, A.G. Op. #2000-0138.

A municipality may not grant an ad valorem tax exemptions to a new or expanded industry which failed to timely apply for an exemption for the current tax year or for the remainder of the statutory period that exemptions may be granted. Creekmore, Aug. 15, 2003, A.G. Op. 03-0333.

An ad valorem property tax exemption granted to a factory or plant under Miss. Code Ann. § 27-31-101 may be canceled by a municipality or county a minimum of 12 months after manufacturing ceases. Ross, February 23, 2007, A.G. Op. #07-00080, 2007 Miss. AG LEXIS 28.

RESEARCH REFERENCES

ALR. Exemption of public golf courses from local property taxes. 41 A.L.R.4th 963.

§ 27-31-109. Granting of exemptions.

At its next meeting after receipt of certification from the State Tax Commission, the governing authorities of the municipality or the county board of supervisors, as the case may be, may enter an order on its minutes declaring that such property is exempted, and the date when such exemption begins and expires, and the chancery clerk or city clerk shall record such application, together with the order approving same, in a book kept in his office for that purpose, and shall file one (1) copy with the State Tax Commission.

SOURCES: Codes, 1930, § 3110; 1942, § 9704; Laws, 1930, ch. 67; Laws, 1936, 2nd Ex. ch. 19; Laws, 1952, ch. 420, § 2; Laws, 1989, ch. 524, § 19; Laws, 1991, ch. 385 § 2; Laws, 2009, ch. 546, § 7, eff from and after passage (approved Apr. 15, 2009.)

Editor's Note — Laws of 1989, ch. 524, § 36, provides as follows:

"SECTION 36. The repeal or amendment of this act shall not reduce the terms of any tax reduction, special tax incentive or financial assistance agreed upon pursuant to official action by the Department of Economic Development, the State Tax Commission or other appropriate agency of the state or political subdivision thereof prior to the effective date of such repeal or amendment."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Constitutional authority for municipalities to grant tax exemption to new enterprises, see Miss. Const. Art. 7, § 192.

Powers of boards of supervisors, generally, see § 19-3-41.

JUDICIAL DECISIONS

1. In general.

Statute that order granting exemption becomes effective within specified time in absence of petition for election held not delegation of legislative power. Gully v. Wilmut Gas & Oil Co., 174 Miss. 794, 165 So. 620 (1936).

Supervisors' order granting tax exemption held not incomplete. Gully v. Wilmut Gas & Oil Co., 174 Miss. 794, 165 So. 620 (1936).

Exemption held not waived merely by delay in claiming, nor by antecedent payment of taxes, provided claim is made within five-year exemption period. Gully v. Wilmut Gas & Oil Co., 174 Miss. 794, 165 So. 620 (1936).

RESEARCH REFERENCES

ALR. Exemption of public golf courses from local property taxes. 41 A.L.R.4th 963.

§ 27-31-111. Cessation of exempted operations.

If at any time during an authorized period of ad valorem tax exemption for a given plant there is a cessation of manufacturing operations as herein defined for a continuous period of twelve (12) months or more, all unexpired tax exemptions covered by Sections 27-31-101 through 27-31-117 for that particular plant shall become void, and if manufacturing operations are begun at a later date, a new application may be filed subject to the same approval and the same certification for the unexpired balance of the period covered by the original exemption.

SOURCES: Codes, 1930, § 3112; 1942, § 9706; Laws, 1930, ch. 67; Laws, 1952, ch. 420, § 4.

JUDICIAL DECISIONS

1. In general.

The provisions of Code 1972 § 27-31-105, § 27-31-111, and § 27-31-113, which define the type of exemption and specify when it may be suspended or cancelled, indicate that the exemption for additional or expanded manufacturing facilities was intended for new but integrated parts of a manufacturing concern, which exemption is susceptible to revocation if the new addition ceases to be a part of the manufacturing process; hence the exemption under Code 1972 § 27-31-105 for additional or expanded manufacturing facilities is lost if the manufacturer leases the new building to another corporation for use as a free port warehouse; however, upon loss of the exemption, the manufacturer may not be assessed back taxes for the amount of the exemptions previously given, since the suspension and cancellation provisions of Code § 27-31-111 and § 27-31-113 are prospective rather than retrospective and should not be construed as penal in nature. City of Jackson v. DeSoto, Inc., 350 So. 2d 684 (Miss. 1977).

ATTORNEY GENERAL OPINIONS

Neither § 27-31-111 nor § 27-31-113 applied to a situation involving the cessation of operations of a manufacturing plant where operations had not yet ceased for a continuous period of 12 months and there was no claim of fraud against the company that owned the plant and, therefore, the company was still entitled to its tax exemption. Perkins, Jan. 11, 2002, A.G. Op. #01-0768.

An ad valorem property tax exemption granted to a factory or plant under Miss. Code Ann. § 27-31-101 may be canceled by a municipality or county a minimum of 12 months after manufacturing ceases. Ross, February 23, 2007, A.G. Op. #07-00080, 2007 Miss. AG LEXIS 28.

§ 27-31-113. Cancellation of exemption obtained by fraud, etc.

If, at any time after exemption from ad valorem taxation hereunder has been obtained, it comes to the attention of the governing authorities of the municipality, the county board of supervisors, the Mississippi Agricultural and Industrial Board, the state tax commission, or the attorney general, that such exemption was obtained by fraud, misstatement or misrepresentation, or that the industry does not meet the definitions of a manufacturing industry as set forth in Section 27-31-101, it shall be the duty of the governing authorities of the municipality or the county board of supervisors to cancel such exemption.

SOURCES: Codes, 1930, § 3113; 1942, § 9707; Laws, 1930, ch. 67; Laws, 1952, ch. 420, § 6.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 57-1-2 provides that the words "Agricultural and Industrial Board" shall mean the "Department of Economic and Community Development".

JUDICIAL DECISIONS

1. In general.

The provisions of Code 1972 § 27-31-105, § 27-31-111, and § 27-31-113, which define the type of exemption and specify when it may be suspended or cancelled, indicate that the exemption for additional or expanded manufacturing facilities was intended for new but integrated parts of a manufacturing concern, which exemption is susceptible to revocation if the new addition ceases to be a part of the manufacturing process; hence the exemption under Code 1972 § 27-31-105 for additional or expanded manufacturing facilities is lost if the manufacturer leases the new building to another corporation for use as a free port warehouse; however, upon loss of the exemption, the manufacturer may not be assessed back taxes for the amount of the exemptions previously given, since the suspension and cancellation provisions of Code § 27-31-111 and § 27-31-113 are prospective rather than retrospective and should not be construed as penal in nature. City of Jackson v. DeSoto, Inc., 350 So. 2d 684 (Miss. 1977).

ATTORNEY GENERAL OPINIONS

Neither § 27-31-111 nor § 27-31-113 applied to a situation involving the cessation of operations of a manufacturing plant where operations had not yet ceased for a continuous period of 12 months and there was no claim of fraud against the company that owned the plant and, therefore, the company was still entitled to its tax exemption. Perkins, Jan. 11, 2002, A.G. Op. #01-0768.

An ad valorem property tax exemption granted to a factory or plant under Miss. Code Ann. § 27-31-101 may be canceled by a municipality or county a minimum of 12 months after manufacturing ceases. Ross, February 23, 2007, A.G. Op. #07-00080, 2007 Miss. AG LEXIS 28.

§ 27-31-115. Grant of exemptions by municipalities.

All municipalities may grant like exemptions from municipal ad valorem taxation for a period not exceeding ten (10) years to all manufacturers and other new enterprises mentioned in Section 27-31-101 hereof, and gasworks, waterworks, cooperative electrification associations, excepting railroads and additions or expansions or replacements mentioned in Section 27-31-105 hereof; however, municipal authorities, in lieu of granting the exemption for one (1) period of ten (10) years, may grant the exemption in consecutive periods of less than ten (10) years, but the total of such consecutive periods shall not exceed ten (10) years.

No new exemption from ad valorem taxes levied for school district purposes shall be granted pursuant to this section from and after July 1, 1990.

SOURCES: Codes, 1930, § 3114; 1942, § 9708; Laws, 1930, ch. 67; Laws, 1952, ch. 420, § 7; Laws, 1990, ch. 502, § 14; Laws, 1994, ch. 571, § 4, eff from and after July 1, 1994.

Cross References — Constitutional authority for municipalities to grant tax exemption to encourage business, see Miss. Const. Art. 7, § 192.

Municipalities encouraging establishment of industry generally, see § 21-19-43.

JUDICIAL DECISIONS

1. In general.

The legislature can confer upon municipalities the power to encourage the establishment of factories within the corporate limits. Robertson v. Southern Paper Co., 119 Miss. 113, 80 So. 384 (1919).

However, where a factory had already been established when a city board entered into a contract to pass an ordinance to extend the corporate limits so as to include the factory, which was agreed to by the factory corporation, in consideration of the promise of the city board to pass an exemption ordinance in favor of the corporation, such ordinance was ultra vires and void. Robertson v. Southern Paper Co., 119 Miss. 113, 80 So. 384 (1919).

§ 27-31-117. State taxes.

Nothing in Sections 27-31-101 through 27-31-117 shall be construed to exempt any of the property mentioned in said sections from state ad valorem taxes.

SOURCES: Codes, 1930, § 3115; 1942, § 9709; Laws, 1930, ch. 67; Laws, 1952, ch. 420, § 9.

ATTORNEY GENERAL OPINIONS

An ad valorem property tax exemption granted to a factory or plant under Miss. Code Ann. § 27-31-101 may be canceled by a municipality or county a minimum of 12 months after manufacturing ceases. Ross, February 23, 2007, A.G. Op. #07-00080, 2007 Miss. AG LEXIS 28.

CHAPTER 33

Ad Valorem Taxes—Homestead Exemptions

Article 1. General Provisions 27-33-1
Article 3. Homestead Exemptions to Certain Persons Inducted Into Armed Forces. [Repealed]
Article 5. Municipal Homestead Exemptions. [Repealed]

ARTICLE 1.

GENERAL PROVISIONS.

SEC.
27-33-1. Short title.
27-33-3. Homestead exemption generally.
27-33-5. Repealed.
27-33-7. Application of exemption; determination of right to exemption.
27-33-9. Construction of terms.
27-33-11. General definitions.
27-33-13. Head of family defined.
27-33-15. Family group defined.
27-33-17. Ownership defined.
27-33-19. Home and homestead defined.
27-33-21. Exclusions from definition of home and from homestead exemption.
27-33-23. Homes outside a municipality.
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27-33-27. Unplatted land shall be described and acreage stated.
27-33-29. Effect of destruction, etc., of dwelling.
27-33-31. Duties of applicant for homestead exemption; procedure for application.
27-33-33. Duties of tax assessor; assessor authorized to amend homestead exemption applications under certain circumstances.
27-33-35. Duties of clerk of board of supervisors.
27-33-37. Duties and powers of the board of supervisors.
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27-33-43. Repealed.
27-33-45. Duties of the state auditor.
27-33-47. Duties of the state treasurer.
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27-33-51. Duties of tax collectors.
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27-33-65. Time for reassessment and collection of taxes upon disallowance of exemption.
27-33-67. Exemptions for persons over 65 years of age and disabled.
27-33-69. Tax table for exemptions claimed in 1985 calendar year for which reimbursement is made in 1986 calendar year.

27-33-71. Tax table for exemptions claimed in 1986 calendar year for which reimbursement is made in 1987 calendar year.
27-33-73. Tax table for exemptions claimed in 1987 calendar year for which reimbursement is made in 1988 calendar year.
27-33-75. Tax table for exemptions claimed in 1988 calendar year for which reimbursement is made in 1989 calendar year, and to exemptions claimed for reimbursement in subsequent years.
27-33-77. Reimbursement of tax losses; limitations.
27-33-79. Reimbursement of tax losses as affected by reduction of approved homestead applicants.

§ 27-33-1. Short title.

This article may be cited as "The Homestead Exemption Law of 1946."

SOURCES: Codes, 1942, § 9717; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 3.

Cross References — Homestead exemption laws not applicable, see § 51-13-7.

ATTORNEY GENERAL OPINIONS

Property that was not an owner-occupied home on January 1 was not eligible for homestead exemption for 2001. Robinson, Apr. 5, 2002, A.G. Op. #02-0155.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Homestead § 1 et seq.

§ 27-33-3. Homestead exemption generally.

(1) In order to recognize and give effect to the principle of tax-free homes as a public policy in Mississippi, to encourage home building and ownership, and to give additional security to family groups, it is hereby declared that homes legally assessed on the land roll, owned and actually occupied as a home by bona fide residents of this state, who are heads of families, shall be exempt from the ad valorem taxes herein enumerated, on not in excess of Seven Thousand Five Hundred Dollars ($7,500.00) of the assessed value including an area of land not in excess of that specified hereinafter in this article. The exemption from taxes shall be limited to the following:

(a) All homeowners who are heads of families and who qualify under the provisions of this article shall be exempt from taxes levied in 1983 and payable in 1984 and from taxes levied in 1984 and payable in 1985 as follows:

(i) The ad valorem taxes levied by counties pursuant to Section 27-39-329. Amounts so exempted shall not be reimbursed by the state.

(ii) Ad valorem taxes levied for maintenance and current expenses by or for a county as authorized by Section 27-39-303, but the levy for such purpose in any year for which reimbursement is to be made shall not exceed the millage levied for such purpose for the 1984 fiscal year; or a levy for county roads or a road district as authorized by Section 27-39-305; or a levy for constructing and maintaining all bridges and culverts as authorized by Section 65-15-7, but the levy for either or both of such purposes for which reimbursement is to be made shall not in any event exceed seven (7) mills in any year; the countywide levy for the support of the minimum education program to produce the minimum local ad valorem tax effort required of a county as authorized by Section 37-57-1, and the supplementary school district tax levy for the support and maintenance of county schools as authorized by Section 37-57-105; provided, however, that the total of the levies made under said Sections 37-57-1 and 37-57-105, which shall be exempt under this article, shall be limited to twenty (20) mills for any affected property area, and in the event the total of such levies should exceed twenty (20) mills for any affected property area, the excess shall not be exempt under this article, and in such case, the levy for the support of the minimum education program of the county shall have priority as an exempt levy;

(iii) Ad valorem taxes levied for the support and maintenance of agricultural high schools within the limits and as authorized by Section 37-27-3, and ad valorem taxes levied for the support of junior colleges within the limits and as authorized by subsection (2) of Section 37-29-141; provided, however, that the exemption from taxation and reimbursement for tax loss for agricultural high schools and junior colleges, or any combination of same, shall not exceed three (3) mills in any one (1) year for any one (1) county;

(iv) Ad valorem taxes levied for the support of the minimum education program of a municipal separate school district to produce the minimum local ad valorem tax effort required of such municipal separate school district as authorized by Section 37-57-3, and the supplementary tax levy for the support and maintenance of the schools of a municipal separate school district as authorized by Section 37-57-105; provided, however, the total of the levies made under said Sections 37-57-3 and 37-57-105 which shall be exempt under this article shall be limited to fifteen (15) mills for any affected property area, except in those special municipal separate school districts as provided by Sections 37-7-701 through 37-7-743, the total of the levies made under Sections 37-7-739 and 37-57-105 for such special municipal separate school district which shall be exempt under this article shall not exceed twenty (20) mills, and in the event the total of such levies should exceed fifteen (15) mills for any affected property area, or twenty (20) mills in the case of a special municipal separate school district, the excess shall not be exempt under this article, and, in such case, the levy for the support of the minimum education program of the municipal separate school district shall have priority as an exempt levy;

(v) In the event any law referred to in this section is amended so as to authorize an increase in the tax levy for any purposes, such increase in the levy shall be applied to and taxes collected from the property owners on the entire assessed value of exempted homes; and the tax loss resulting from such increase shall not be reimbursed under the provisions of the Homestead Exemption Law, unless such law clearly specifies that the exempted assessed value of homes is exempt from such increase;

(vi) Ad valorem taxes levied under Sections 65-15-7 and 65-15-21 shall be used solely for purposes levied.

(b) Those homeowners who qualify for the exemptions provided for in subsection (a) of this section and who have reached the age of sixty-five (65) years on or before January 1 of the year for which the exemption is claimed; and service-connected, totally disabled American veterans who were honorably discharged from military service, upon presentation of proper proof of eligibility shall be exempt from any and all ad valorem taxes, including the forest acreage tax authorized by Section 49-19-115, on homesteads not in excess of Seven Thousand Five Hundred Dollars ($7,500.00) of assessed value thereof; provided, however, that property owned jointly by husband and wife and property owned in fee simple by either spouse shall be eligible for this exemption in full if either spouse fulfills the age or disability requirement. On all other jointly owned property the amount of the allowable exemption shall be determined on the basis of each individual joint owner's qualifications and pro rata share of the property.

(c) Those homeowners who qualify for the exemptions provided for in subsection (a) of this section and who would be classified as disabled under the Federal Social Security Act (42 U.S.C.C. Section 416(i)), upon presentation of proper proof of eligibility shall be exempt from any and all ad valorem taxes, including the forest acreage tax authorized by Section 49-19-115, on homesteads not in excess of Seven Thousand Five Hundred Dollars ($7,500.00) of assessed value thereof; provided, however, that property owned jointly by husband and wife and property owned in fee simple by either spouse shall be eligible for this exemption in full if either spouse fulfills the disability requirement. On all other jointly owned property, the amount of the allowable exemption shall be determined on the basis of each individual joint owner's qualifications and pro rata share of the property.

(d) Homeowners who qualify for exemption under subsection (c) of this section will not be included in the limitations of Section 27-33-59(e).

Reimbursement by the state of Mississippi to the various taxing units for the tax losses incurred because of the additional exemptions provided for under these subsections shall be made in accordance with the procedures outlined in Section 27-33-41.

This section shall not apply to claims for homestead exemptions filed in any calendar year subsequent to the 1984 calendar year.

SOURCES: Codes, 1942, § 9714; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 1; Laws, 1950, ch. 302; Laws, 1954, Ex. ch. 31 §§ 1, 2; Laws, 1956, ch. 296, § 17; Laws, 1974, ch. 508, § 1; Laws, 1975, ch. 457, § 1; Laws, 1979, ch. 302, § 5; Laws, 1980, ch. 505, § 1; Laws, 1984, ch. 379, § 1; Laws, 1984, ch. 453, § 1, eff from and after May 7, 1984.

Editor's Note — Section 37-7-739 referred to in (1)(a)(iv) was repealed by Laws of 1986, ch. 492, § 48, eff from and after July 1, 1987.

Section 37-7-743 referred to in (1)(a)(iv), was repealed by Laws of 1986, ch. 492, § 48, eff from and after July 1, 1987.

Section 37-57-3 referred to in (1)(a)(iv) was repealed by Laws of 1986, ch. 492, § 189, eff from and after July 1, 1987.

Laws of 1979, ch. 302, § 11, to take effect and be in force from and after January 1, 1979, provides as follows:

SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or sales or use tax laws prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun; and the provisions of the income tax law or sales or use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which the applicable sections of this act become effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

Cross References — Applicability of exemption to tax for farmers' markets, see § 19-5-73.

Exclusion of ad valorem tax levy to support operation of youth court from reimbursement under homestead exemption, see § 19-9-96.

Applicability of homestead exemption to county fire ant eradication tax, see § 19-9-99.

Applicability of homestead exemption to county fair association tax, see § 19-9-101.

Homestead exemptions for tax years commencing in 1985, see § 27-33-65 et seq.

Reimbursement by the State of Mississippi to the various taxing units for tax losses incurred because of the additional exemptions provided for hereunder, see §§ 27-33-77, 27-33-79.

Levy to defray cost of reappraisal not being reimbursable under Homestead Exemption Law, see § 27-39-325.

Inapplicability of homestead exemption to levies for assistance of veterans, see § 35-3-21.

Applicability of exemptions contained in subsections (b) and (c) of this section to the forest acreage tax, see § 49-19-115.

Exemption from the forest acreage tax, see § 49-19-115.

Applicability of homestead exemption to taxes for conservation of water resources, see §§ 51-9-11, 51-13-131.

Forfeiture of right to receive homestead exemption upon default in repayment of loan from railroad revitalization fund, see § 57-43-11.

Use of homestead reimbursement to pay harbor bonds, see § 59-5-51.

Deduction from reimbursement for delinquencies in payments on obligations for establishment of port, harbor or waterway, see § 59-5-51.

Exemption from homestead reimbursement for tax levied to finance developing and equipping port, see § 59-17-19.

Applicability of homestead exemption to local taxes to service state highway bonds, see § 65-1-81.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.
2. Partition.
3.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. Validity.
12. Construction and application.

I. UNDER CURRENT LAW.

1. In general.

The language of Article 4, § 112 of the Mississippi Constitution, which designates Class I property for ad valorem taxation as "single-family, owner-occupied, residential real property," includes and provides for land actually occupied as the principle home of a family group as contemplated by the homestead statute, § 27-33-3, and was intended to constitute further encouragement to homebuilders and homeowners. Where persons own and occupy more than one property, they may claim only one as a principle residence for tax purposes. The determination as to which of the owner-occupied residences is to be the principle residence must be made on a case-by-case basis. Board of Supvrs. v. Duplantier, 583 So. 2d 1275 (Miss. 1991).

2. Partition.

A wife, who held real property as joint tenant with husband from whom she was separated but not divorced, could maintain an action to partition the property, notwithstanding that husband continued to reside on the property and claimed it as his homestead. Trigg v. Trigg, 498 So. 2d 334 (Miss. 1986).

In a proceeding under § 11-21-3 for partition of certain real estate and farm lands owned by the petitioner and her former husband as joint tenants, with the right of survivorship, the chancery court erred in dismissing the petition where the divorce decree made no attempt to grant to either party an estate for life or for years or any other estate or title in derogation or diminution of the title already vested in them respectively as joint tenants. The provision in the decree that the husband might farm a portion of the land was ineffectual to deprive the petitioner of her vested interest or to restrict the exercise of her rights with respect to the same; § 27-33-3, which provides for the exemption of homesteads from certain taxes, does not affect the right of a cotenant or tenant in common to partite property commonly or jointly owned. Welborn v. Welborn, 386 So. 2d 722 (Miss. 1980).

Where the former husband lost his right to occupy the marital home under a divorce decree giving the wife the right to exclusive use of the home, the husband lost his homestead rights under Code 1972 §§ 27-33-3 & 85-3-21, so that the husband thus held no homestead exemption on the property which could be used to defeat the former wife's right to partition under Code 1972 § 11-21-3; the existence of homestead rights in the former wife was irrelevant, since she waived them by bringing a suit for partition sale. Blackmon v. Blackmon, 350 So. 2d 44 (Miss. 1977).

3.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. Validity.

The limitation upon levy of ad valorem taxes on exempt homesteads for school maintenance contained in this section [Code 1942, § 9714] constitutes a reason why the maintenance fund should not be diverted to building purposes so as to unduly increase the tax burden on other property for the operation and maintenance of the schools. Williams v. State ex rel. Att'y Gen., 209 Miss. 251, 46 So. 2d 591 (1950).

The statute providing that one-half of all ad valorem taxes collected for road purposes by or for a county on property within a municipality, the streets of which are worked at the expense of the municipality, shall be paid over to the municipality, was neither repealed nor amended by the Homestead Exemption Law, with the provision therein relating to reimbursement of the taxing units by the state for tax loss resulting from being prevented from collecting ad valorem taxes on homestead property for road purposes. Coahoma County v. City of Clarksdale, 192 Miss. 851, 7 So. 2d 882 (1942).

12. Construction and application.

When a county received a sum of money from the state as a reimbursement for tax loss by reason of its being prevented by the homestead exemption act from collecting ad valorem taxes for road purposes on homestead property in a municipality, the funds so received were in lieu of such ad valorem taxes, and, in view of the statute providing that one half of all ad valorem taxes collected by or for a county on property within a municipality for road purposes should be paid over to the municipality, one half of the amount thus received from the state should have been paid over by the county to the municipality. Coahoma County v. City of Clarksdale, 192 Miss. 851, 7 So. 2d 882 (1942).

Lands entered under the homestead laws of the United States are not liable to taxation before the time at which the right to a patent is perfected. Hoskins v. Illinois Cent. R. Co., 78 Miss. 768, 29 So. 518, 84 Am. St. R. 644 (1901).

RESEARCH REFERENCES

ALR. Homestead Right of Cotenant as Affecting Partition. 83 A.L.R.6th 605.

ATTORNEY GENERAL OPINIONS

Corrections in assessment roll must be initiated prior to end of fiscal year in which taxes on erroneous assessment were payable; however, board of supervisors may entertain refund for payments in excess of sum properly due as consequence of error, subject to three year time limitation for claims accruing on or after July 1, 1989 and six year limitation for claims accruing prior to July 1, 1989. Hollimon, July 8, 1992, A.G. Op. #92-0471.

Mississippi has no age requirement for homestead exemption; if seven-year-old is owner of property and occupies home in accordance with statute, he may claim homestead exemption. Barlow, July 29, 1992, A.G. Op. #92-0520.

Am Jur. 40 Am. Jur. 2d, Homestead § 3 et seq.

9 Am. Jur. Legal Forms 2d, Homestead, § 135:15 et seq. (declarations of homestead exemption).

9 Am. Jur. Legal Forms 2d, Homestead, § 135:41 et seq. (release of homestead by specific instrument).

9 Am. Jur. Legal Forms 2d, Homestead, §§ 135:46, 135:47 (mortgage provisions relating to homestead).

9 Am. Jur. Legal Forms 2d, Homestead, §§ 135:53, 135:54 (abandonment of homestead).

9 Am. Jur. Legal Forms 2d, Homestead, § 135:65 et seq. (release or waiver of homestead).

13 Am. Jur. Pl & Pr Forms (Rev), Homestead, Forms 1-8 (proceedings for appraisal and setting aside of homestead exemption; for sale and application of excess to indebtedness).

13 Am. Jur. Pl & Pr Forms (Rev), Homestead, Forms 21-29 (proceedings preventing or setting aside forced sale of homestead).

6 Am. Jur. Proof of Facts, Homestead, Proof No. 1 (existence of homestead exemption).

6 Am. Jur. Proof of Facts, Homestead, Proof No. 2 (termination of homestead exemption by removal from premises).

CJS. 40 C.J.S., Homesteads § 1 et seq.

§ 27-33-5. Repealed.

Repealed by Laws, 1984, ch. 453, § 22, eff from and after January 1, 1985.

[Codes, 1942, § 9715; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 2; Laws, 1975, ch. 457, § 2]

Editor's Note — Former § 27-33-5 related to municipal separate school districts.

§ 27-33-7. Application of exemption; determination of right to exemption.

The exemption granted shall apply to assessments made for the year 1974 and subsequent years. The right to the exemption shall be determined according to the facts existing on January 1, 1974, and on January 1 of each year thereafter, but shall not be effective in any year unless an application has been made therefor, and the exemption has been granted, or allowed, as hereinafter provided.

SOURCES: Codes, 1942, § 9716; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 3; Laws, 1975, ch. 457, § 3; Laws, 1991, ch. 390, § 1, eff from and after July 1, 1991.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the second sentence. The words "the facts existing on the January 1, 1974" were changed to "the facts existing on January 1, 1974". The Joint Committee ratified the correction at its May 20, 1998, meeting, and the section has been reprinted in the supplement to reflect the corrected language.

Cross References — Application for homestead exemption, see § 27-33-31.

§ 27-33-9. Construction of terms.

When used in this article the meaning of words, terms, and phrases, shall be limited to that stated in the specific definitions contained in the article. Any other word, term, sentence, phrase, or paragraph shall be construed according to its usual meaning and according to its context. In case of doubt, construction shall be in favor of the state.

SOURCES: Codes, 1942, § 9718; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 4.

§ 27-33-11. General definitions.

The subject words and terms of this section, for the purpose of this article, shall have meaning as follows:

(a) "Tax loss" means the exemption from ad valorem taxes allowed homeowners in this article. "Reimbursement of tax loss" means the amount of tax losses to be reimbursed to each taxing unit as determined by Sections 27-33-77 and 27-33-79.

(b) "Taxing unit" means (i) any county, (ii) any special municipal separate school district with or without added territory, (iii) any municipal separate school district with or without added territory, and (iv) any municipality.

(c) "Added territory" means territory or land lying outside of a municipality, added or annexed to and being a part of a municipal separate school district and subject to the tax permitted to be imposed by the district for school purposes as provided by Chapter 57, Title 37, Mississippi Code of 1972.

(d) “Municipality” means a city, town or village which is legally incorporated and which has not been automatically abolished according to the provisions of Sections 21-1-49 and 21-1-51 or by other lawful process, and in which taxes are assessed, levied and collected.

(e) “Depository” means the bank or institution and place officially designated as the depository for funds of a county.

(f) “Apartment” means rooms in an eligible dwelling with space and facilities for sleeping and with space and facilities, or equipment, for preparing and serving meals, which equipment is supplied by the owner or tenant, or both: (1) in a building constructed as a dwelling for two (2) or more families, or (2) in an ordinary dwelling, consisting of three (3) or more rooms, exclusive of a bathroom; in either case rented or leased or available for rent or lease, or occupied by a family group other than the owner. One (1) or two (2) rooms rented and used for housekeeping shall be counted as rented rooms.

(g) “Commission, ” “Tax Commission” or “department” means the Department of Revenue of the State of Mississippi.

(h) “Auditor” means the Auditor of Public Accounts of the State of Mississippi.

(i) “Treasurer” means the Treasurer of the State of Mississippi.

(j) “Officer or officers” includes the county tax assessor, the members of the county board of supervisors, the clerk of the board of supervisors, the chancery clerk, the county tax collector, and the legally authorized deputies of each.

(k) “Eligible” when used in this article, (1) with reference to persons means those persons who are eligible under the terms of this article for homestead exemption, or (2) with reference to property means the real property eligible for exemption as a homestead under the terms of this article as to title, quantity, occupancy, use to which put, and other conditions required by this article, or (3) with reference to title or ownership means title to or ownership of real property as defined in Section 27-33-17.

(*l*) “He” and other pronouns in the masculine gender embrace a female as well as a male, unless a contrary intention is disclosed by the context.

(m) “Adjoining land, or land actually joined” means two (2) separately described tracts of land having at one or more points a common boundary, or where the corners of the two (2) tracts actually touch, but two (2) tracts connected by an easement or by a narrow strip of land as a right-of-way for ingress and egress shall not be treated as adjoining, or actually joined.

(n) “Supplemental roll” means a list containing the amount of the assessment of all lands and buildings which are all, or a part, of exempt homesteads, and a list of the homeowners to whom a homestead exemption has been allowed by the board for the current year, and showing in strict alphabetical order the names of all applicants to whom the exemption was granted, and in vertical columns the amount of the assessment, the assessed value of the exempted land and buildings, the assessed value of the land and buildings not exempted, the page and line number of the regular land roll where entered, the number of acres exempted, the dollar amount of exemption allowed and such other information as the Department of Revenue may require. The department shall prescribe the form of the supplemental roll and may require such rolls to be prepared and maintained on electronic media. The supplemental roll, as herein defined, is hereby made a legal supplement to and a part of the complete land assessment roll of the county or municipality and shall be subject to all laws relating to assessment rolls and particularly Sections 27-35-117, 27-35-123 and 27-35-125 as far as applicable and not inconsistent with the provisions of this article.

The supplemental roll, when certified by the clerk of the board of supervisors and delivered to the tax collector, shall be his warrant to allow the amount of the tax exemption to each person as a credit on or deduction from the gross amount of the taxes charged to that person on the assessment roll.

(o) "Ad valorem tax" means any tax where the amount levied is based upon or determined by the value of the property subject to the tax.

SOURCES: Codes, 1942, § 9719; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 5; Laws, 1956, ch. 294; Laws, 1975, ch. 457, § 4; Laws, 1984, ch. 453, § 9; Laws, 2001, ch. 334, § 1; Laws, 2009, ch. 492, § 65, eff from and after July 1, 2010.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an

administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Transfer of powers, duties and functions of State Tax Commission and Chairman of the State Tax Commission to Commissioner of Revenue of the Department of Revenue, see § 27-3-4.

Depositories, see § 27-105-1 et seq.

ATTORNEY GENERAL OPINIONS

The tax on acreage provided for in Section 236 of the Mississippi Constitution is not an ad valorem tax, and the lands of those who qualify for the over-65 or disability exemption located within a levee district are subject to any such acreage tax; the millage or ad valorem tax levied for the benefit of the levee district is an ad valorem tax and lands of those who qualify for the over-65 or disability exemption are exempt therefrom. Sherard, Oct. 13, 2000, A.G. Op. #2000-0614.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Homestead § 1.

CJS. 40 C.J.S., Homesteads § 1.

§ 27-33-13. Head of family defined.

The words "head of a family" when used in this article shall mean a natural person, and be limited to the following:

(a) A married person living with husband or wife.

(b) A person who is unmarried but who permanently maintains a home occupied by himself or herself.

(c) A husband living apart from his wife, but not divorced, having legal custody of one or more of their children and occupying and maintaining a home for them; but if the husband does not have legal custody of one or more children he shall be considered the head of a family if he occupies the home eligible for exemption at the time of separation.

(d) A wife living apart from her husband, but not divorced, having legal custody of one or more of their children and occupying and maintaining a home for them; but if the wife does not have legal custody of one or more children she shall be considered the head of a family if she occupies the home eligible for exemption at the time of separation.

(e) A person who is unmarried, a resident of the state, and permanently maintains a bona fide home for the benefit of one or more persons who are legally, morally, through blood relation or by assumed responsibility, dependent upon him for support even though the said unmarried person, from necessity, does not regularly reside in the home so maintained; but only one (1) home may be so exempted to one (1) person or for the same group.

(f) Any one (1) of a group of two (2) or more persons related within the third degree, computed according to the rule of the civil law, when the members of the group hold collectively eligible title, and the group occupies and maintains a home as defined in this article.

(g) A minor child who holds eligible title to and occupies a home when residing with parent(s) or other legal guardian.

(h) The child of a testator who is responsible for the payment of taxes on a dwelling and the eligible land on which it is located in which he holds a remainder interest in the dwelling and eligible land (as defined in Section 27-33-17(h)).

(i) A husband living apart from his wife, but not divorced, occupying and maintaining a home, provided the husband submits satisfactory evidence that he has not filed a combined return with his wife during any year for which homestead exemption is sought by him.

(j) A wife living apart from her husband, but not divorced, occupying and maintaining a home, provided the wife submits satisfactory evidence that she has not filed a combined return with her husband during any year for which homestead exemption is sought by her.

SOURCES: Codes, 1942, § 9720; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 6; Laws, 1993, ch. 513, § 2; Laws, 1994, ch. 561, § 1, eff from and after passage (approved April 5, 1994).

Editor's Note — Laws of 1993, ch. 513, § 9, effective July 1, 1993, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1994, ch. 561, §§ 6, 7, eff from and after passage (approved April 5, 1994), provide as follows:

"SECTION 6. The provisions of Section 27-33-31 to the contrary notwithstanding, any person who is granted a homestead exemption pursuant to the provisions of this act, may file for such exemption at any time prior to April 30, 1994.

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

ATTORNEY GENERAL OPINIONS

Fact that taxpayer is married but separated, would not disqualify her from qualifying as 'head of family' under definition provided in Miss. Code § 27-33-13(f). Nunnery, Jan. 14, 1993, A.G. Op. #92-0891.

RESEARCH REFERENCES

ALR. Wife as head of family within homestead or other property exemption provision. 67 A.L.R.2d 779.

Am Jur. 40 Am. Jur. 2d, Homestead § 15.

CJS. 40 C.J.S., Homesteads § 9.

§ 27-33-15. Family group defined.

The persons named in each of the paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i) and (j) in Section 27-33-13 shall constitute a "family group" within the meaning of this article.

SOURCES: Codes, 1942, § 9721; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 7; Laws, 1993, ch. 513, § 3; Laws, 1994, ch. 561, § 2, eff from and after passage (approved April 5, 1994).

Editor's Note — Laws of 1993, ch. 513, § 9, effective July 1, 1993, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

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"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Homestead § 59 et seq.

CJS. 40 C.J.S., Homesteads § 9.

§ 27-33-17. Ownership defined.

The meaning of the words "own," "owned," "ownership" and similar words, for the purpose of this article, shall be limited to real estate, and to title, as follows:

(a) "Fee title," meaning inheritable title (whether by inheritance, gift or purchase), limited to only ownerships known as (i) "absolute" (freehold), or (ii) "tenancy for life" (life estate), or (iii) "tenancy in common," "joint tenancy," "joint ownership" and "common title"; the conditions of none of which may be restricted during the life of the owner as to possession, occupancy and use; and the words "joint owner," "joint tenant" or "joint tenancy" when used in this article shall include "tenant in common," "tenancy in common" and "estate in common," unless a different meaning is clearly indicated by the context.

(b) "An express trust of record," meaning a trust created in express terms in a recorded deed, will or other writing, with reference to the land to which it applies, the beneficiary of which trust is the head of a family, who under the terms of the trust, is entitled to and does occupy and use the property as a home, which property is assessed for taxation to the beneficiary and on which property the beneficiary pays the taxes, unless otherwise provided in the trust.

(c) "School lands legally leased," meaning a legal lease of school land which is perpetually renewable, or school land legally leased for a term of ten (10) years or more under the provisions of Section 211 of the Mississippi Constitution, the owner of which lease is the head of a family who is entitled to and does occupy and use the property as a home, and who renders the property for assessment and pays the taxes thereon, as required by law.

(d) "Pearl River Valley Water Supply District lands legally leased," meaning a legal lease of lands owned in fee by the Pearl River Valley Water Supply District, an agency of the State of Mississippi, for a period of twenty (20) years or more, with the option of renewal for successive periods of ten (10) years, to a person, individually or in joint tenancy, who is the head of a family and is entitled to and does occupy and use the property as a home, and who renders the property for assessment and pays the taxes thereon, as required by law.

(e) "Mississippi-Yazoo Delta Levee Board lands legally leased," meaning a legal lease of lands owned in fee title by the Mississippi-Yazoo Delta Levee Board, an agency of the State of Mississippi, for a period of five (5) years or more, with the option of renewal for successive periods of five (5) years, to a person, individually or in joint tenancy, who is the head of a family and is entitled to and does occupy and use the property as a home, and who renders the property for assessment and pays the taxes thereon, as required by law. This exemption shall include all leases in existence that were entered into prior to July 1, 1992.

(f) If title is held by deed or other grant, such instrument shall be dated and acknowledged on or before January 1 of the year for which homestead exemption is applied and shall be filed for record with the chancery clerk on or before January 7 of the year for which homestead exemption is applied and the book and page, or properly assigned unique identification number, of such recordation shall be noted on the application. If title is held by will, inheritance, adverse possession or any means other than grant, same may be proved by affidavit, citation of any court record, or such other evidence as may be required by the commission. However, nothing shall prevent homestead exemptions where it shall be shown that title was derived through inheritance and the recording evidence otherwise necessary was later recorded.

(g) "Fraternal or benevolent organization land legally leased," meaning a legal lease of land from any fraternal or benevolent organization owning land exempt from ad valorem taxation under the provisions of Section 27-31-1, leased for ten (10) years or more or for life, the owner of which lease is a head of a family who is entitled to and does occupy and uses the property as a home, and who renders the property for assessment and pays the tax thereon, as required by law. This paragraph shall not apply to any leased land if the dwelling located thereon is owned by the fraternal or benevolent organization.

(h) "A remainder interest in the dwelling and eligible land," meaning an interest held by the children of a testator in a dwelling and the eligible land on which it is located, created by the express terms of the will of the testator, in which the children of the testator are granted the use of property only upon the death or remarriage of the spouse of the testator or the occurrence of certain other contingencies and such dwelling and the eligible land on which it is located is assessed for taxation to the children of the testator and on which dwelling and eligible land the children of the testator pay the taxes thereon, as required by law.

(i) "Old School for the Blind land legally subleased," meaning a legal sublease of lands pursuant to Section 1 of Chapter 558, Laws of 2010, subleased for a period of twenty (20) years or more, the owner of which lease is a head of a family who is entitled to and does occupy and use the property as a home, and who renders the property for assessment and pays the taxes thereon, as required by law.

SOURCES: Codes, 1942, § 9722; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 8; Laws, 1968, ch. 584, § 1; Laws, 1970, ch. 302, § 1; Laws, 1982, ch. 406, § 1; Laws, 1992, ch. 477, § 1; Laws, 1994, ch. 561, § 3; Laws, 2007, ch. 564, § 4; Laws, 2008, ch. 464, § 1; Laws, 2010, ch. 558, § 4, eff from and after July 1, 2010.

Editor's Note — Laws of 1992, ch. 477, § 3, effective from and after July 1, 1992, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1994, ch. 561, §§ 6, 7, eff from and after passage (approved April 5, 1994), provide as follows:

"SECTION 6. The provisions of Section 27-33-31 to the contrary notwithstanding, any person who is granted a homestead exemption pursuant to the provisions of this act, may file for such exemption at any time prior to April 30, 1994.

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2010, ch. 558, §§ 1 through 3, effective July 1, 2010, provide:

"SECTION 1. (1) Acting on behalf of the State Department of Education, the Department of Finance and Administration may sell and convey or lease certain state-owned real property formerly known as the "Old School for the Blind," located north of Eastover Drive, in the City of Jackson, Mississippi, provided that the sale and conveyance or lease is subject to the conditions authorized in this section. The property being more particularly described as follows:

"Starting at a concrete monument that is the SE corner of the SW ¼ of the SW ¼ of Section 24, T6N, R1E in the First Judicial District, Hinds County, Mississippi, run thence N 00°-01′ E along the line between the E ½ and the W ½ of the SW ¼ of Section 24, T6N, R1E for a distance of 194.40 feet to a point on the north line of Eastover Drive, as said drive is now laid out and improved, the point of beginning.

"Run thence N 56°-46′ W along said north line of said Eastover Drive for a distance of 3.02 feet to the P.C. of a curve to the left with a radius (chord) of 5769.65 feet (angle of curve was omitted, 04°-00′-0r″); Run thence along said curve and said north line of Eastover Drive for a distance of 402.91 feet to the P.T. of said curve; Run thence N 60°-46′ W along said north line of said Eastover Drive for a distance of 684.92 feet to a point on the east right-of-way line of U.S. Highway No. 51, as said highway is now laid out and improved; Run thence N 29°-14′ E along said east right-of-way line of U.S. Highway No. 51 for a distance of 1422.24 feet to a point; Run thence N 87°-06′ E for a distance of 251.28 feet to a point on the line between the E ½ and the W ½ of the SW ¼ of Section 24, T6N, R1E, and also being a point on the south line of share 1 of the Mosal partition; Run thence S 00°-01′ W along said line between the E ½ and the W ½ of the SW ¼ of Section 24, T6N, R1E for a distance of 1796.17 feet to the point of beginning.

"All the above described land being situated in the W ½ of the SW ¼ of Section 24, T6N, R1E in the First Judicial District of Hinds County, Mississippi, and being wholly within the corporate limits of the City of Jackson and containing 22.822 acres.

"(2) The real property and the improvements thereon, described in subsection (1) of this section, shall, if sold, be sold for not less than the current fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, who shall be selected by the Department of Finance and Administration and shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board. If the real property and the improvements thereon, described in subsection (1) of this section, are leased, the Department of Finance and Administration is authorized to negotiate all aspects of any lease and any terms and ancillary agreements pertaining to any lease as may be reasonably necessary to effectuate the intent and purposes of this section and to ensure a fair and equitable return to the state.

"(3) The Department of Finance and Administration is authorized to negotiate an agreement in conjunction with any sale or lease entered into with the developer selected under the authority of Sections 1 through 3 of this act requiring that the purchaser or lessee construct or fund the construction of a new residence for the Superintendent of the Mississippi School for the Blind and a new storage and building maintenance facility on the grounds of the new campus for the school, the total cost of which shall be capped at One Million Two Hundred Thousand Dollars ($1,200,000.00) as of the effective date of this act, adjusted for inflation. The developer shall be entitled to a credit against the purchase price or rental payments, as applicable, for any amounts funded or expended by the developer pursuant to the agreement referenced in this subsection.

"(4) All monies derived from the sale or lease of the property authorized in this section, less amounts used to fund the construction authorized in subsection (3) of this section and used to reimburse the Department of Finance and Administration for fees paid to the development facilitator as provided in subsection (3) of Section 3 of this act, shall be deposited into a special fund, to be designated as the School for the Blind Trust Fund which is created in the State Treasury. Monies in the special fund shall be disbursed by the Department of Finance and Administration to the State Board of Education for the sole benefit of the Mississippi School for the Blind and the Mississippi School for the Deaf. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on the amounts in the special fund shall be deposited to the credit of the special fund.

"(5)(a) The property described in subsection (1) of this section shall be sold or leased to result in the highest and best use of the property and to ensure that the property is used in a manner that will not interfere with the operation of the Mississippi School for the Blind or the Mississippi School for the Deaf; provided that such redevelopment shall be designed and implemented to include commercial, residential and/or retail space and to preserve and enhance the existing educational, residential and commercial integrity of the surrounding community as determined by the Department of Finance and Administration.

"(b) It is the intent of the Legislature that the property will be sold or leased for the benefit of creating value while also preserving the local environment and promoting growth in the area.

"(6) The Department of Finance and Administration shall review and consider all proposals for purchase or lease of the property described in subsection (1) of this section in light of all factors which the department deems relevant, including, without limiting the generality of its consideration, the following:

"(a) The proposed purchase price of the property or rental payments, as applicable;

"(b) The proposed use or uses of the property;

"(c) The cost, scope and scale of the proposed development and the amount of the investment to be made by the proposed purchaser or lessee of the property;

"(d) The projected impact of the proposed development on the City of Jackson and the State of Mississippi, including anticipated or projected tax revenue to be generated as a result; and

"(e) The projected timetable for the development.

"(7) The State of Mississippi retains the exclusive right to repurchase the property, if the property is sold under this act, or to terminate the lease of the property, if the property is leased under this act, if the purchaser or lessee, as applicable, has not completed construction of more than fifty thousand (50,000) square feet of improvements on the property consistent with purposes as set forth in this section before December 31 of the tenth year after the date of the sale or lease of the property. If any of the conditions stated within this subsection occur within ten (10) years of the authorized sale or conveyance or lease of the property described in subsection (1) of this section, the state may exercise its right to repurchase or terminate the lease, which right shall be exercised within twelve (12) months of the expiration of the above referenced ten-year period. The repurchase price for the property described in subsection (1) of this section and the improvements thereon shall be the fair market value at the time of repurchase as determined by the average of at least two (2) appraisals by qualified appraisers, who shall be selected by the Department of Finance and Administration and shall be certified and licensed by the Mississippi Real Estate Appraiser

Licensing and Certification Board. If the state exercises its right to repurchase the property or to terminate the lease as set forth in this subsection, the state shall also have the right to repurchase the property described in Section 2 of this act on the same terms using the average of two (2) appraisals as authorized in this subsection.

"(8) The State of Mississippi shall retain all oil, gas and mineral rights to the property sold or leased under this section.

"(9) The Department of Finance and Administration may correct any discrepancies in the legal description provided in subsection (1) of this section as long as the property conveyed is bounded on the South by Eastover Drive; on the West by Interstate 55; on the East by the line between the East ½ and the West ½ of the SW ¼ of Section 24, T6N, R1E; and on the North by the South line of share 1 of the Mosal partition.

"SECTION 2. (1) The Mississippi Transportation Commission is authorized to sell and convey certain state-owned real property located within the City of Jackson, Hinds County, Mississippi, in connection with the proposed sale or lease of the "Old School for the Blind Property" authorized under Section 1 of this act, the property being more particularly described as follows:

"Being situated in the Southwest ¼ of Section 24, Township 6 North, Range 1 East, City of Jackson, First Judicial District of Hinds County, Mississippi, and being more particularly described by metes and bounds as follows, to wit:

"Commence at the southeast corner of the Southwest ¼ of the said Southwest ¼ of Section 24 and run North 00°44′25″ West for 194.40 feet along the midline of the said Southwest ¼ of Section 24 to an iron pin which marks the northeastern right-of-way line of Eastover Drive; thence run 615.70 feet along the arc of a 9,738.24 radius curve to the left along the said northeastern right-of-way line to the **POINT OF BEGINNING** of the herein described parcel, said arc having a 615.60 foot chord which bears North 59°10′22′′ West.

"From said **POINT OF BEGINNING**, thence run along the northeastern right-of-way line of Eastover Drive for the following courses and distances: North 03°43′19″ West for 52.94 feet; North 42°09′21′′ West for 30.11 feet; North 61°39′19″ West for 21.92 feet; North 81°18′33′′ West for 74.33 feet; North 61°39′19″ West for 120.00 feet; North 56°27′39′′ West for 55.23 feet; North 12°23′57″ East for 36.40 feet; North 61°39′19" West for 30.00 feet; South 42°22′51″ West for 41.23 feet; North 56°22′02′′ West for 38.72 feet; North 02°25′47″ East for 11.18 feet to the southeastern right-of-way line of Interstate Highway No. 55; thence run along said southeastern right-of-way line for the following courses and distances: North 28°59′41′′ East for 188.36 feet; North 24°27′42″ East for 61.59 feet; along the arc of a curve to the right, said curve having a radius of 14,268.95 feet, an arc length of 249.04 feet, a chord bearing of North 29°44′28′′ East, a chord length of 249.04 feet, and a central angle of 01°00′00″; North 16°21′54′′ East for 102.79 feet; thence, leaving said right-of-way line, run South 32°09′47″ West for 99.85 feet; thence run on and along the arc of a curve to the left, said curve having a radius of 14,296.95 feet, an arc length of 311.05 feet, a chord bearing of South 29°37′05′′ West, a chord length of 311.04 feet, and a central angle of 01°14′48″; thence run South 28°59′4/1′′ West for 208.32 feet; thence run South 14°20′36″ East for 43.71 feet; thence run South 59°20′36′′ East for 69.79 feet; thence run South 61°30′34″ East for 254.59 feet; thence run South 68°33′12′′ East for 96.83 feet back to the **POINT OF BEGINNING**, and containing 0.87 acres, more or less.

"This description is based on the Mississippi State Plane Coordinate System Grid North (NAD 83 West Zone) using a combined factor of 0.999942059 and a convergence angle of +00°05′43″.

"(2) The real property described in subsection (1) of this section, shall be sold in conjunction with the authorized sale and conveyance or lease of the Old School for the Blind Property under Section 1 of this act for not less than the current fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, who shall be selected by the Mississippi Transportation Commission and shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification

Board. The Department of Finance and Administration is authorized to include the real property conveyed under subsection (1) of this section as part of the property leased or sold to the developer selected under the authority of this act.

"(3) The State of Mississippi shall retain all oil, gas and mineral rights to the property sold under this section.

"SECTION 3. (1) The Department of Finance and Administration is authorized to contract with a development facilitator with expertise in mixed-use developments with commercial, office and residential components to assist the State of Mississippi in identifying potential developers of the property described in Sections 1 and 2 of this act and in selecting the development plan and developer for the property that best represent the intent of the Legislature as expressed in this act. The Department of Finance and Administration is authorized to pay for the contractual services from fees charged by the Department of Finance and Administration and to be reimbursed from income generated by any lease or sale of the property.

"(2) The Department of Finance and Administration is authorized to enter into negotiations with the developer selected under the authority of this act and with utility providers for purposes of working toward an agreement for the relocation of utility lines located on the property.

"(3) If the property described in subsection (1) of Section 1 of this act is leased, the Department of Finance and Administration is authorized to manage and collect through the developer rental and lease payments of ground leases for any residential or nonresidential property lease authorized under the authority of the provisions of Section 1 of this act. The Department of Finance and Administration may charge a fee not to exceed the costs of administering Sections 1 through 3 of this act, any leases and any other ancillary agreements executed hereunder."

Cross References — Definition of "eligible" for purpose of ad valorem taxes and homestead exemptions, see § 27-33-11.

Application of this section to definition of home for purposes of the homestead exemption, see § 27-33-63.

ATTORNEY GENERAL OPINIONS

Statute sets January 7 as deadline for recording deeds and other instruments for purposes of filing for homestead exemption, and there is no provision in code for recording deeds after that date. Weathers, April 18, 1990, A.G. Op. #90-0249.

Based on Section 27-33-17(f), an individual may obtain title to property through inheritance however such title might not be recorded until later. When a property owner dies, he no longer has title to that property. Melton, January 10, 1996, A.G. Op. #95-0869.

Property that was not an owner-occupied home on January 1 was not eligible for homestead exemption for 2001. Robinson, Apr. 5, 2002, A.G. Op. #02-0155.

Whether the language of a will grants what amounts to a life estate under subsection (a) of this section is a factual question. Ross, Jan. 30, 2004, A.G. Op. 03-0700.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Homestead § 50 et seq.

CJS. 40 C.J.S., Homesteads §§ 9, 40 et seq.

§ 27-33-19. Home and homestead defined.

The word "home" or "homestead" whenever used in this article shall mean the dwelling, the essential outbuildings and improvements, and the eligible land assessed on the land roll actually occupied as the primary home of a family group, eligible title to which is owned by the head of the family, a bona fide resident of this state, and when the dwelling is separately assessed on the land roll for the year in which the application is made, subject to the limitations and conditions contained in this article. And the meaning of the word is hereby extended to specifically include:

(a) One or more separate, bona fide dwellings and the land on which they are located, each occupied under eligible ownership rights by the widow or the widower, or the children of a deceased parent, each separate home being property or a portion of property owned by a deceased person whose estate has not been distributed or divided or vested in a person or persons for life. But in each case the property for which exemption is sought may not be more than the applicant's inherited portion, and must be accurately described on the application and the conditions explained in writing. But the heirs may elect to accept one (1) homestead for the estate. The home occupied by the surviving spouse as provided by the laws of this state shall be preferred over the homes claimed by the children, and the exemption to any other heir shall not exceed the remaining amount obtained by deducting the assessed value of the surviving spouse's portion from the assessed value of the whole, divided by the number of heirs other than the surviving spouse. Each heir claiming exemption shall meet the requirements as to occupancy, residence and head of a family, and no part of the undivided inherited lands shall be combined with other lands and included in a homestead exemption under this article except in the case of the surviving spouse.

(b) One or more separated dwellings and eligible land, not apartments, occupied each by a family group as a bona fide home, eligible title to which entire property is held jointly by purchase or otherwise by the heads of the families, and each joint owner shall be allowed exemption on the proportion of the total assessed value of all the property, equal to his fractional interest (except as otherwise provided in paragraph (r) of this section), provided no part of the jointly owned property shall be exempted to a joint owner who has been allowed an exemption on another home in the state.

(c) A dwelling and eligible lands owned jointly or severally by a husband and wife, if they are actually and legally living together. But if husband and wife are living apart, not divorced, as provided by paragraphs (c) and (d) of Section 27-33-13, jointly owned land shall not be included except that the dwelling occupied as a home at the time of separation shall be eligible if owned jointly or severally.

(d) The dwelling and eligible land on which it is located, owned and actually occupied as a home by a minister of the gospel or by a licensed school teacher actively engaged whose duties as such require them to be away from the home for the major part of each year, including January 1, provided it was eligible before such absence, and no income is derived therefrom, and no part of the dwelling claimed as a home is rented, leased or occupied by another family group, and when the home is eligible except for the temporary absence of the owner.

(e) The dwelling and the eligible land on which it is located, consisting of not more than four (4) apartments; provided (i) if one (1) apartment is actually occupied as a home by the owner the exemption shall be limited to one-fourth (¼) the exemption granted pursuant to this article, or (ii) if the dwelling and land is owned by four (4) persons and the four (4) owners each occupy one (1) apartment as a home, the exemption shall be granted equally to each owner; provided revenue is not derived from any part of the property except as permitted by paragraphs (g) and (h) of this section. If the dwelling and the eligible land on which it is located consists of not more than three (3) apartments, and one (1) apartment is actually occupied as a home by the owner, the exemption shall be limited to one-third (⅓) the exemption granted pursuant to this article, or if the dwelling and land is owned by three (3) persons and the three (3) owners each occupy one (1) apartment as a home, the exemption shall be granted equally to each owner; provided revenue is not derived from any part of the property except as permitted by paragraphs (g) and (h) of this section. If the dwelling and the eligible land on which it is located consists of not more than two (2) apartments and one (1) apartment is actually occupied as a home by the owner, the exemption shall be limited to one-half (½) the exemption granted pursuant to this article, or if the dwelling and land is owned by two (2) persons and the two (2) owners each occupy one (1) apartment as a home, the exemption shall be granted equally to each owner; provided revenue is not derived from any part of the property except as permitted by paragraphs (g) and (h) of this section.

(f) The dwelling and eligible land on which it is located, actually occupied as the bona fide home of a family group owned by the head of the family whereof five (5) and not more than six (6) rooms are rented to tenants or boarders, and where there are rented rooms and an apartment, the apartment shall be counted as three (3) rooms; provided the exemption shall be limited to one-half (½) the exemption granted pursuant to this article.

(g) The dwelling and eligible land being the bona fide home of a family group owned by the head of the family used partly as a boarding house, or for the entertainment of paying guests, if the number of boarders or paying guests does not exceed eight (8).

(h) The dwelling and eligible land being the bona fide home of a family group owned by the head of the family wherein activity of a business nature is carried on, but where the assessed value of the property associated with the business activity is less than one-fifth (⅕) of the total assessed value of the bona fide home; provided, however, that when the owner's full-time business is located in the bona fide home of the head of the family, such owner shall be limited to one-half (½) of the exemption granted pursuant to this article.

(i) The dwelling and the eligible land on which it is located and other eligible land even though ownership of and title to the dwelling and the land on which it is located has been conveyed to a housing authority for the purpose of obtaining the benefits of the Housing Authorities Law as authorized by Sections 43-33-1 through 43-33-53 or related laws.

(j) A dwelling and the eligible land on which it is located owned by a person who is physically or mentally unable to care for himself and confined in an institution for treatment shall be eligible notwithstanding the absence of the owner unless the home is excluded under other provisions of this article. The exemption is available for a period of ten (10) years from the day of confinement.

(k) The dwelling and the eligible land on which it is located owned by two (2) or more persons of a group, as defined in paragraph (f) of Section 27-33-13, when two (2) or more of the group have eligible title, or if the group holds a life estate, a joint estate or an estate in common; provided the title of the several owners shall be of the same class.

(*l*) A dwelling and the eligible land on which it is located under a lease of sixty (60) years by the Pearl River Valley Water Supply District at the reservoir known as the "Ross Barnett Reservoir" actually occupied as the home or homestead of a family or person as defined heretofore in this article. However, no such family group or any other person heretofore qualified and defined in this article shall be allowed to establish more than one (1) home or homestead for the purpose and intent of this article.

(m) Units of a condominium constructed in accordance with Section 89-9-1 et seq., Mississippi Code of 1972, known as the "Mississippi Condominium Law," and actually occupied as the home or homestead of a family or person as defined heretofore in this article. However, no such family group or any other person heretofore qualified and defined in this article shall be allowed to establish more than one (1) home or homestead for the purpose and intent of this article.

(n) A dwelling and the eligible land on which it is located held under a lease of ten (10) years or more or for life, from a fraternal or benevolent organization and actually occupied as the home or homestead of a family or person as defined heretofore in this article. No such family group or any other person heretofore qualified and defined in this article shall be allowed to establish more than one (1) home or homestead for the purpose and intent of this article.

(o) A dwelling being the bona fide home of a family group owned by the head of the family and located on land owned by a corporation incorporated more than fifty (50) years ago and in which the homeowner is a shareholder, and which corporation owns no land outside Monroe and Itawamba Counties. No family group or any other person heretofore qualified and defined in this article shall be allowed to establish more than one (1) home or homestead for the purpose and intent of this article.

(p) A dwelling and the eligible land on which it is located under a lease of five (5) years or more by the Mississippi-Yazoo Delta Levee Board actually occupied as the home or homestead of a family or person as defined pursuant to this article. However, no such family group or any other person qualified and defined pursuant to this article shall be allowed to establish more than one (1) home or homestead for the purpose and intent of this article. The definition shall include all leases in existence that were entered into prior to July 1, 1992.

(q) A dwelling and the eligible land on which the spouse of a testator is granted the use of such dwelling for life or until the occurrence of certain contingencies and the children of such testator are granted a remainder interest in the dwelling and eligible land. Such dwelling and eligible land will only qualify as a home or homestead if (i) the spouse of the testator would otherwise qualify as head of a family if the interest were a tenancy for life (life estate), and (ii) the dwelling and eligible land is actually occupied as the home of the spouse of the testator. The children of the testator shall be allowed to establish an additional homestead for purposes of this article.

(r) A dwelling and the eligible land actually occupied as the bona fide home of a family group. If a person has been granted use and possession of a home in a divorce decree, that individual is eligible for full exemption, regardless of whether the property is jointly owned.

(s) A dwelling being the bona fide home of a family group located on land owned by a corporation incorporated more than forty (40) years ago and in which the head of the family group is a shareholder, and which corporation owns no land outside Lee County, Mississippi. No family group or any other person qualified and defined in this article shall be allowed to establish more than one (1) home or homestead for the purpose and intent of this article.

(t) The floor or floors of a building used solely for the residence of a family group when the building is owned by the head of the family and another floor or floors of the building are used for business activity.

(u) A dwelling being the bona fide home of a family group located on land owned by an incorporated club and in which the head of the family group is a shareholder, and which incorporated club owns no land outside Union County, Mississippi; provided, the incorporated club pays all ad valorem taxes levied on the land upon which the dwelling is located. No family group or any other person qualified and defined in this article shall be allowed to establish more than one (1) home or homestead for the purpose and intent of this article.

(v) A dwelling and the eligible land on which it is located under a sublease for a period of twenty (20) years or more on land leased pursuant to Section 1 of Chapter 558, Laws of 2010, actually occupied as the home or homestead of a family or person as defined pursuant to this article. However, no such family group or any other person qualified and defined pursuant to this article shall be allowed to establish more than one (1) home or homestead for the purpose and intent of this article.

(w) The portion of a building that is listed on the National Register of Historic Places that is used solely for the residence of a family group when the building is owned by the head of the family and rooms in the building are rented to transient guests; however, not more than ten (10) rooms in the building may be rented to transient guests.

(x) A dwelling and the eligible land on which it is located under a lease or sublease of twenty-five (25) years or more actually occupied as the home or homestead of a family or person as defined in this article. However, no such family group or any other person heretofore qualified and defined in this article shall be allowed to establish more than one (1) home or homestead for the purpose and intent of this article. This paragraph shall not apply to a lease between a person who is physically or mentally unable to care for himself and the institution in which the person is confined.

SOURCES: Codes 1942, § 9723; Laws, 1940, ch. 127; Laws, 1942, ch. 189; Laws, 1946, ch, 261, § 9; Laws, 1970, ch. 303, § 1; Laws, 1971, ch. 481, § 2; Laws, 1982, ch. 406, § 2; Laws, 1984, ch. 453, § 10; Laws, 1991, ch. 602, § 1; Laws, 1992, ch. 477, § 2; Laws, 1994, ch. 561, § 4; Laws, 1996, ch. 431, § 1; Laws, 2000, ch. 615, § 1; Laws, 2001, ch. 483, § 2; Laws, 2004, ch. 504, § 1; Laws, 2006, ch. 557, § 1; Laws, 2007, ch. 533, § 4; Laws, 2007, ch. 564, § 5; Laws, 2010, ch. 558, § 5; Laws, 2011, ch. 480, § 34; Laws, 2013, ch. 409, § 1, eff from and after July 1, 2013.

Joint Legislative Committee Note — Section 4 of ch. 533, Laws of 2007, effective upon passage (approved April 18, 2007), amended this section. Section 5 of ch. 564, Laws of 2007, effective upon passage (approved April 21, 2007), also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 26, 2007, meeting of the Committee.

Editor's Note — Laws of 1991, ch. 602, § 9, effective July 1, 1991, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1992, ch. 477, § 3, effective from and after July 1, 1992, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1994, ch. 561, §§ 6, 7, eff from and after passage (approved April 5, 1994), provide as follows:

"SECTION 6. The provisions of Section 27-33-31 to the contrary notwithstanding, any person who is granted a homestead exemption pursuant to the provisions of this act, may file for such exemption at any time prior to April 30, 1994.

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1996, ch. 431, § 2, effective from and after January 1, 1997, provides as follows:

"SECTION 2. Nothing in Section 27-33-19 shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2000, ch. 615, § 2, provides:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2000, ch. 615, § 3, provides:

"SECTION 3. This act shall take effect and be in force from and after January 1, 2001."

Laws of 2001, ch. 483, § 3, provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2004, ch. 504, § 3 provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2010, ch. 558, §§ 1 through 3, effective July 1, 2010, provide:

"SECTION 1. (1) Acting on behalf of the State Department of Education, the Department of Finance and Administration may sell and convey or lease certain state-owned real property formerly known as the "Old School for the Blind," located north of Eastover Drive, in the City of Jackson, Mississippi, provided that the sale and conveyance or lease is subject to the conditions authorized in this section. The property being more particularly described as follows:

"Starting at a concrete monument that is the SE corner of the SW ¼ of the SW ¼ of Section 24, T6N, R1E in the First Judicial District, Hinds County, Mississippi, run thence N 00°-01′ E along the line between the E ½ and the W ½ of the SW ¼ of Section 24, T6N, R1E for a distance of 194.40 feet to a point on the north line of Eastover Drive, as said drive is now laid out and improved, the point of beginning.

"Run thence N 56°-46′ W along said north line of said Eastover Drive for a distance of 3.02 feet to the P.C. of a curve to the left with a radius (chord) of 5769.65 feet (angle of curve was omitted, 04°-00′-0r″); Run thence along said curve and said north line of Eastover Drive for a distance of 402.91 feet to the P.T. of said curve; Run thence N 60°-46′ W along said north line of said Eastover Drive for a distance of 684.92 feet to a point on the east right-of-way line of U.S. Highway No. 51, as said highway is now laid out and improved; Run thence N 29°-14′ E along said east right-of-way line of U.S. Highway No. 51 for a distance of 1422.24 feet to a point; Run thence N 87°-06′ E for a distance of 251.28 feet to a point on the line between the E ½ and the W ½ of the SW ¼ of Section 24, T6N, R1E, and also being a point on the south line of share 1 of the Mosal partition; Run thence S 00°-01′ W along said line between the E ½ and the W ½ of the SW ¼ of Section 24, T6N, R1E for a distance of 1796.17 feet to the point of beginning.

"All the above described land being situated in the W ½ of the SW ¼ of Section 24, T6N, R1E in the First Judicial District of Hinds County, Mississippi, and being wholly within the corporate limits of the City of Jackson and containing 22.822 acres.

"(2) The real property and the improvements thereon, described in subsection (1) of this section, shall, if sold, be sold for not less than the current fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, who shall be selected by the Department of Finance and Administration and shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board. If the real property and the improvements thereon, described in subsection (1) of this section, are leased, the Department of Finance and Administration is authorized to negotiate all aspects of any lease and any terms and ancillary agreements pertaining to any lease as may be reasonably necessary to effectuate the intent and purposes of this section and to ensure a fair and equitable return to the state.

"(3) The Department of Finance and Administration is authorized to negotiate an agreement in conjunction with any sale or lease entered into with the developer selected under the authority of Sections 1 through 3 of this act requiring that the purchaser or lessee construct or fund the construction of a new residence for the Superintendent of the Mississippi School for the Blind and a new storage and building maintenance facility on the grounds of the new campus for the school, the total cost of which shall be capped at One Million Two Hundred Thousand Dollars ($1,200,000.00) as of the effective date of this act, adjusted for inflation. The developer shall be entitled to a credit against the purchase price or rental payments, as applicable, for any amounts funded or expended by the developer pursuant to the agreement referenced in this subsection.

"(4) All monies derived from the sale or lease of the property authorized in this section, less amounts used to fund the construction authorized in subsection (3) of this section and used to reimburse the Department of Finance and Administration for fees paid to the development facilitator as provided in subsection (3) of Section 3 of this act, shall be deposited into a special fund, to be designated as the School for the Blind Trust Fund which is created in the State Treasury. Monies in the special fund shall be disbursed by the Department of Finance and Administration to the State Board of Education for the sole benefit of the Mississippi School for the Blind and the Mississippi School for the Deaf. Unexpended amounts remaining in the special fund at the end of the fiscal year shall not lapse into the State General Fund, and any interest earned on the amounts in the special fund shall be deposited to the credit of the special fund.

"(5)(a) The property described in subsection (1) of this section shall be sold or leased to result in the highest and best use of the property and to ensure that the property is used in a manner that will not interfere with the operation of the Mississippi School for the Blind or the Mississippi School for the Deaf; provided that such redevelopment shall be designed and implemented to include commercial, residential and/or retail space and to preserve and enhance the existing educational, residential and commercial integrity of the surrounding community as determined by the Department of Finance and Administration.

"(b) It is the intent of the Legislature that the property will be sold or leased for the benefit of creating value while also preserving the local environment and promoting growth in the area.

"(6) The Department of Finance and Administration shall review and consider all proposals for purchase or lease of the property described in subsection (1) of this section in light of all factors which the department deems relevant, including, without limiting the generality of its consideration, the following:

"(a) The proposed purchase price of the property or rental payments, as applicable;

"(b) The proposed use or uses of the property;

"(c) The cost, scope and scale of the proposed development and the amount of the investment to be made by the proposed purchaser or lessee of the property;

"(d) The projected impact of the proposed development on the City of Jackson and the State of Mississippi, including anticipated or projected tax revenue to be generated as a result; and

"(e) The projected timetable for the development.

"(7) The State of Mississippi retains the exclusive right to repurchase the property, if the property is sold under this act, or to terminate the lease of the property, if the property is leased under this act, if the purchaser or lessee, as applicable, has not completed construction of more than fifty thousand (50,000) square feet of improvements on the property consistent with purposes as set forth in this section before December 31 of the tenth year after the date of the sale or lease of the property. If any of the conditions stated within this subsection occur within ten (10) years of the authorized sale or conveyance or lease of the property described in subsection (1) of this section, the state may exercise its right to repurchase or terminate the lease, which right shall be exercised within twelve (12) months of the expiration of the above referenced ten-year period. The repurchase price for the property described in subsection (1) of this section and the improvements thereon shall be the fair market value at the time of repurchase as determined by the average of at least two (2) appraisals by qualified appraisers, who shall be selected by the Department of Finance and Administration and shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board. If the state exercises its right to repurchase the property or to terminate the lease as set forth in this subsection, the state shall also have the right to repurchase the property described in Section 2 of this act on the same terms using the average of two (2) appraisals as authorized in this subsection.

"(8) The State of Mississippi shall retain all oil, gas and mineral rights to the property sold or leased under this section.

"(9) The Department of Finance and Administration may correct any discrepancies in the legal description provided in subsection (1) of this section as long as the property conveyed is bounded on the South by Eastover Drive; on the West by Interstate 55; on the East by the line between the East ½ and the West ½ of the SW ¼ of Section 24, T6N, R1E; and on the North by the South line of share 1 of the Mosal partition.

"SECTION 2. (1) The Mississippi Transportation Commission is authorized to sell and convey certain state-owned real property located within the City of Jackson, Hinds County, Mississippi, in connection with the proposed sale or lease of the "Old School for the Blind Property" authorized under Section 1 of this act, the property being more particularly described as follows:

"Being situated in the Southwest ¼ of Section 24, Township 6 North, Range 1 East, City of Jackson, First Judicial District of Hinds County, Mississippi, and being more particularly described by metes and bounds as follows, to wit:

"Commence at the southeast corner of the Southwest ¼ of the said Southwest ¼ of Section 24 and run North 00°44′25″ West for 194.40 feet along the midline of the said Southwest ¼ of Section 24 to an iron pin which marks the northeastern right-of-way line of Eastover Drive; thence run 615.70 feet along the arc of a 9,738.24 radius curve to the left along the said northeastern right-of-way line to the **POINT OF BEGINNING** of the herein described parcel, said arc having a 615.60 foot chord which bears North 59°10′22'' West.

"From said **POINT OF BEGINNING**, thence run along the northeastern right-of-way line of Eastover Drive for the following courses and distances: North 03°43′19″ West for 52.94 feet; North 42°09′21'' West for 30.11 feet; North 61°39′19″ West for 21.92 feet; North 81°18′33'' West for 74.33 feet; North 61°39′19″ West for 120.00 feet; North 56°27′39'' West for 55.23 feet; North 12°23′57″ East for 36.40 feet; North 61°39′19" West for 30.00 feet; South 42°22′51″ West for 41.23 feet; North 56°22′02'' West for 38.72 feet; North 02°25′47″ East for 11.18 feet to the southeastern right-of-way line of Interstate Highway No. 55; thence run along said southeastern right-of-way line for the following courses and distances: North 28°59′41'' East for 188.36 feet; North 24°27′42″ East for 61.59 feet; along the arc of a curve to the right, said curve having a radius of 14,268.95 feet, an arc length of 249.04 feet, a chord bearing of North 29°44′28'' East, a chord length of 249.04 feet, and a central angle of 01°00′00″; North 16°21′54'' East for 102.79 feet; thence, leaving said right-of-way line, run South 32°09′47″ West for 99.85 feet; thence run on and along the arc of a curve to the left, said curve having a radius of 14,296.95 feet, an arc length of 311.05 feet, a chord bearing of South 29°37′05'' West, a chord length of 311.04 feet, and a central angle of 01°14′48″; thence run South 28°59′4/1'' West for 208.32 feet; thence run South 14°20′36″ East for 43.71 feet; thence run South 59°20′36'' East for 69.79 feet; thence run South 61°30′34″ East for 254.59 feet; thence run South 68°33′12'' East for 96.83 feet back to the **POINT OF BEGINNING**, and containing 0.87 acres, more or less.

"This description is based on the Mississippi State Plane Coordinate System Grid North (NAD 83 West Zone) using a combined factor of 0.999942059 and a convergence angle of +00°05′43″.

"(2) The real property described in subsection (1) of this section, shall be sold in conjunction with the authorized sale and conveyance or lease of the Old School for the Blind Property under Section 1 of this act for not less than the current fair market value as determined by the average of at least two (2) appraisals by qualified appraisers, who shall be selected by the Mississippi Transportation Commission and shall be certified and licensed by the Mississippi Real Estate Appraiser Licensing and Certification Board. The Department of Finance and Administration is authorized to include the real property conveyed under subsection (1) of this section as part of the property leased or sold to the developer selected under the authority of this act.

"(3) The State of Mississippi shall retain all oil, gas and mineral rights to the property sold under this section.

"SECTION 3. (1) The Department of Finance and Administration is authorized to contract with a development facilitator with expertise in mixed-use developments with commercial, office and residential components to assist the State of Mississippi in identifying potential developers of the property described in Sections 1 and 2 of this act and in selecting the development plan and developer for the property that best represent the intent of the Legislature as expressed in this act. The Department of Finance and Administration is authorized to pay for the contractual services from fees charged by the Department of Finance and Administration and to be reimbursed from income generated by any lease or sale of the property.

"(2) The Department of Finance and Administration is authorized to enter into negotiations with the developer selected under the authority of this act and with utility providers for purposes of working toward an agreement for the relocation of utility lines located on the property.

"(3) If the property described in subsection (1) of Section 1 of this act is leased, the Department of Finance and Administration is authorized to manage and collect through the developer rental and lease payments of ground leases for any residential or nonresidential property lease authorized under the authority of the provisions of Section 1 of this act. The Department of Finance and Administration may charge a fee not to exceed the costs of administering Sections 1 through 3 of this act, any leases and any other ancillary agreements executed hereunder."

Laws of 2010, ch. 558, § 6, provides:

"SECTION 6. Sections 1, 2 and 3, Chapter 564, Laws of 2007, which authorize the Mississippi Development Authority to lease the Old School for the Blind property, are hereby repealed."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the subpart designations in subsection (e) was corrected by substituting "(i)" and "(ii)" for "(1)" and "(2)," respectively.

Cross References — Clarification of definition of "home," see § 27-33-63.

JUDICIAL DECISIONS

1. In general.

Claim by a candidate for county supervisor that his ownership of an interest in his mother's homestead property in the county through descent and distribution entitled him to a presumption of residency in that county was not supported by Miss. Code Ann. § 27-33-19 because the primary home actually occupied by the candidate and his family was not his mother's house, but another home outside the county. Young v. Stevens, 968 So. 2d 1260 (Miss. 2007).

ATTORNEY GENERAL OPINIONS

A bed and breakfast may be covered under Section 27-33-19(g) if the number of paying guests does not exceed eight. However, if the number of paying guests exceeds eight, the bed and breakfast would be excluded from homestead exemption. Hunt, October 4, 1995, A.G. Op. #95-0677.

A beneficiary who occupies property which is jointly held with other beneficiaries would be entitled to a homestead exemption equal to his or her proportionate ownership interest in the property. Ross, Jan. 30, 2004, A.G. Op. 03-0700.

If a person were to own a home in the city and sign homestead stating that this was his primary home and receive the assessment of 10% plus this homestead allowance there and he also owns a farm 20 miles from the city and has a second home on the farm where he spends time almost everyday and on the weekends, if the taxpayer has claimed a homestead exemption for one residence, the other residence will not qualify for the other 10% assessment. Johnson, Jan. 28, 2005, A.G. Op. 04-0643.

Where a married couple owns a home in Mississippi where the husband lives full time, he files Mississippi income tax and has his automobile tagged in this state, and they also own a home in Tennessee where the wife works and claims her residency, she tags her automobile in Tennessee and does not pay Mississippi income tax, it appears that the Mississippi property would qualify for the 10% assessment. Johnson, Jan. 28, 2005, A.G. Op. 04-0643.

RESEARCH REFERENCES

ALR. Homestead exemption as extending to rentals derived from homestead property. 40 A.L.R.2d 897.

Accountability of cotenants for rents and profits or use and occupation. 51 A.L.R.2d 388.

Estate or interest in real property to which a homestead claim may attach. 74 A.L.R.2d 1355.

Effect of divorce on homestead. 84 A.L.R.2d 703.

Am Jur. 40 Am. Jur. 2d, Homestead §§ 14 et seq., 24 et seq.

9 Am. Jur. Legal Forms 2d, Homestead, § 135:15 et seq. (declarations of homestead exemption).

13 Am. Jur. Pl & Pr Forms (Rev), Homestead, Forms 51-61 (proceedings for continuance of exemption of homestead for benefit of surviving members of family).

13 Am. Jur. Pl & Pr Forms (Rev), Homestead, Forms 71-79 (proceedings to establish homestead out of decedent's estate where no previous homestead selected or declared; "probate homestead").

CJS. 40 C.J.S., Homesteads §§ 9 et seq., 28 et seq.

§ 27-33-21. Exclusions from definition of home and from homestead exemption.

There is excluded from the definition of a home and from homestead exemption the property enumerated in this section.

(a) Any building and land on which it is located, any part of which is used or intended to be used, by the owner or by anyone else, for business purposes; or from which revenue is derived or intended to be derived, except as permitted in paragraphs (f), (g), (h) and (t) of Section 27-33-19 of this article; or which is rented or is available for rent, for business purposes; or any building and the land on which it is located used as a hotel, tourist court, apartment building except as provided in paragraph (e) of Section 27-33-19 of this article; or a dwelling whereof more than six (6) rooms are rented; and where there is one (1) apartment and rented rooms the apartment shall be counted as three (3) rooms; less than three (3) rooms rented and used for housekeeping shall be counted as rented rooms. A proportionate share of agricultural products, produced on the land, received for the use of the land and a tenant house, where the use of the tenant house is merely incidental to the use of the land (where no money is paid and no consideration is paid other than a proportionate share of agricultural products produced on the land), shall not be considered as rent or income from the property so as to exclude it from the definition of a home.

(b) Any buildings or structures and the land on which located used as gins, sawmills, stores, gasoline stations, repair shops, and the like; and any buildings and the land on which located used for the conduct of any business or private manufacture or processing, all whether used in connection with farming operations or not.

(c) Any dwelling house and the land on which it is located, or other land, which is owned by any person or family group to whom an exemption has been allowed on another home in this state except in cases defined in paragraphs (c) and (d) of Section 27-33-13; or any dwelling and the land on which it is located in which any person or family group owns a joint estate, an estate in common, a life estate or other estate defined in paragraph (a) of Section 27-33-17 of this article to whom an exemption has been allowed on another home in this state to the extent of such person's interest; provided, this exclusion shall not apply in the case of husband, or wife, allowed an exemption on the home owned and occupied by them, and when either is a part owner, either as a joint tenant or tenant in common, of another home which is occupied by father, mother, brother, or sister as a bona fide home, eligible for exemption under paragraph (a) of Section 27-33-19 of this article.

(d) Any dwelling house and the land on which it is located, or other land, which is not held under eligible title of ownership, but is being occupied under an agreement to buy, or under a conveyance or contract of conditional sale, or purchase or any similar contract, except as permitted by paragraph (i) of Section 27-33-19 of this article.

(e) Any jointly owned land or jointly owned dwelling combined with individually owned land on which exemption has been claimed and allowed, except as provided in paragraphs (a) and (c) of Section 27-33-19 of this article; and no homestead shall consist of individually owned lands combined with lands held for life.

(f) Any dwelling and the land on which it is located acquired, other than by a bona fide gift or by inheritance, since July 1, 1938, for which one-fourth (¼) of the full purchase price has not been actually paid by the purchaser, unless the deed or instrument by which title is acquired provides, bona fide, for annual payment of interest at the normal rate, and for substantial and regular payments on the principal debt at intervals of one (1) year or less.

(g) Any building of any kind and the land on which it is located, whether inside or outside a municipality, if any part thereof is rented out or held available to be rented out, except as provided in Section 27-33-19, paragraphs (e) and (f), and except rental of farm property for a proportionate share of the crop.

(h) Any land, whether inside or outside a municipality unless it is situated and described as provided in Sections 27-33-23 and 27-33-25 of this article.

SOURCES: Codes, 1942, § 9724; Laws, 1940, ch. 127; Laws, 1942, ch. 189; Laws, 1946, ch. 261, § 10; Laws, 1950, ch. 266; Laws, 1984, ch. 453, § 11; Laws, 1991, ch. 602, § 2; Laws, 2004, ch. 504, § 2, eff from and after Jan. 1, 2005.

Editor's Note — Laws of 1991, ch. 602, § 9, effective July 1, 1991, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2004, ch. 504, § 3 provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

RESEARCH REFERENCES

ALR. Character of property as homestead as affected by its use for business as well as residence purposes. 114 A.L.R. 209.

Homestead exemption as extending to rentals derived from homestead property. 40 A.L.R.2d 897.

Accountability of cotenants for rents and profits or use and occupation. 51 A.L.R.2d 388.

§ 27-33-23. Homes outside a municipality.

In case of a dwelling located on land outside of a municipality, it shall be subject to limitations and restrictions, as follows:

(a) The dwelling and the land on which it is located shall comply with all the requirements of Section 27-33-19, subject to the exclusions of Section 27-33-21, or other parts of this article, and the land included shall be situated as required by Section 27-33-27 of this article.

In the case of a dwelling located outside a municipality, additional lands inside the municipality shall not be added unless actually joined, and unless the owner does not own sufficient eligible lands outside the municipality.

(b) The land to be included with a dwelling for homestead exemption shall not exceed one hundred sixty (160) eligible acres, together with barns, tenant houses, and other necessary out-houses.

(c) If the tract of land upon which the dwelling stands be less than one hundred sixty (160) eligible acres, and if the head of the family owns other eligible land, the homestead exemption may include such additional land nearest the home tract; provided, the additional lands so selected shall be, if possible, in the county of the owner's residence, and all adjoining land in the same section as the dwelling, and in all cases regular legal subdivisions of a section, of forty (40) acres or more shall be taken before lesser divisions and irregular tracts are taken, the number of acres in no event to exceed the grand total of one hundred sixty (160) acres.

(d) The additional tract or tracts of land selected shall be, if possible, in the county in which the dwelling is located; but if an eligible person owns less than one hundred sixty (160) acres of eligible land in the county of residence and owns additional eligible land in an adjoining county, he shall be allowed such additional land not to exceed a grand total in both counties of one hundred sixty (160) acres.

(e) If no event, whether in the county of residence or not, shall the distance between the nearest boundary of each additional tract of land and the land on which the dwelling house stands, be more than five (5) miles, and in no event shall more than three (3) additional disjoined tracts be added to the tract upon which the dwelling stands.

(f) In the case of land in an adjoining county, application for homestead exemption must be filed in each county, and the application filed in the county in which the additional land lies must be accompanied by two copies of the application in the county of residence. Each of the two (2) copies must be certified by the chancery clerk of the county of residence, as true copies. One (1) copy shall be attached to the original application made to the county in which the additional land lies and the other copy shall be attached to the duplicate of the application made to the county in which the additional land lies.

SOURCES: Codes, 1942, § 9725; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 11.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Homestead § 28 et seq.

CJS. 40 C.J.S., Homesteads § 29.

§ 27-33-25. Homes in municipalities.

In case of a dwelling located on land in a municipality, it shall be subject to limitations and restrictions as follows:

(a) On land regularly platted in blocks and lots, the land to be included for homestead exemption shall be limited to adjoining lots; provided, any street, alley or road which is not open to public use may be disregarded in determining the limitation herein fixed.

(b) On platted land, actually joined to unplatted land, all lying inside a municipality, the amount of land that may be included in the homestead for exemption shall be the same as provided for land lying outside a municipality, except that all the land must be actually joined.

(c) On platted or unplatted land in a municipality, actually joined to other land lying outside of the municipality, the owner's dwelling being in the municipality, the provisions of the article for land lying outside a municipality shall apply to the whole, except that all the land must be actually joined.

(d) On unplatted land, all lying inside a municipality, the homestead shall be determined as in the case of homes located outside of a municipality, except that all the land must be actually joined; provided, a street or road through or across the tract shall be disregarded in determining the limitation herein fixed, and the land divided by such street or road shall be held as actually joined.

SOURCES: Codes, 1942, § 9726; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 12.

Cross References — Lands lying outside a municipality, see § 27-33-23. Description of unplatted land, see § 27-33-27.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Homestead § 28 et seq.
CJS. 40 C.J.S., Homesteads § 29.

§ 27-33-27. Unplatted land shall be described and acreage stated.

Land included in an exempt homestead outside a municipality and unplatted land included in an exempt homestead in a municipality shall consist, if possible, of regular legal subdivisions of a section or sections, and tracts of less than forty (40) acres shall not be included unless necessary, and the homestead shall include all adjoining land in the same section as the dwelling before land is included in another section; and in the case of land not surveyed according to the plan of the government surveys, the land shall, as nearly as possible, be defined in straight lines, and the area be, as nearly as practicable, in the form of a square or rectangle, or shall observe such boundaries as streams, bodies of water, railroads or public roads. In all cases, the land shall be described in the application sufficiently to clearly locate and identify the same; also the number of acres in each tract shall be stated, whether shown on the assessment roll or not.

SOURCES: Codes, 1942, § 9727; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 13.

Cross References — Elected or appointed official not to derive any pecuniary benefit as result of duties under this section, and penalties therefor, see § 25-4-119.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Homestead § 28 et seq.
CJS. 40 C.J.S., Homesteads § 29.

§ 27-33-29. Effect of destruction, etc., of dwelling.

In the event a dwelling house, eligible for exemption under this article, is destroyed by fire, flood, storm, or other unavoidable cause, or is demolished or being repaired, so that the family group is compelled to temporarily reside in another place, it shall continue as a home for a period of one (1) year after such occurrence.

SOURCES: Codes, 1942, § 9728; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 14; Laws, 2006, ch. 462, § 1; Laws, 2008, ch. 368, § 1; Laws, 2009, ch. 413, § 1, eff from and after Jan. 1, 2009.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Homestead § 169.

§ 27-33-31. Duties of applicant for homestead exemption; procedure for application.

(1) It shall be the duty of every person, who is eligible for and desires the homestead exemption provided for in this article, to comply with the following provisions:

(a) He shall make written application to the county tax assessor on the prescribed form, on or before the first day of April. Applications not on file on or before April 1 of the current year may not be filed, may not be dated back, may not be accepted by the assessor, may not be allowed by the board of supervisors, and may not be considered by the commission, excepting as provided in paragraph (b) of this section.

Any person who has on file with the tax assessor a valid allowed claim for homestead exemption filed on or after January 1, 1991, shall not be required to annually thereafter reapply for such claim for exemption but shall be credited with such exemption each year so long as such person is entitled to homestead exemption on the same property and there has been no change in the property description, ownership, use or occupancy since January 1 of the preceding year. In the event changes have occurred in the status of the homestead in the property description, ownership, use or occupancy since January 1 of the preceding year, and in the event such person is still eligible for homestead exemption, he shall file a new application and provide all the information required under this section as for the initial application. However, the requirement to file a new application shall not apply to a surviving spouse who is still eligible for homestead exemption. If the deceased spouse qualified for the exemption provided in Section 27-33-67(2), but the surviving spouse does not qualify for such exemption, the surviving spouse must file a new application for homestead exemption.

(b) In cases where the Governor declares by written proclamation that the courthouse or other place that the tax assessor's office may be located is damaged to such an extent that it is not possible to accept applications for homestead exemption, then the Governor may extend the period for filing by a period not to exceed thirty (30) days.

(c) He shall make the application in quadruplicate.

(d) He shall make separate applications, as provided above, to the respective assessors if the property claimed for exemption lies in two (2) counties, first with the assessor of the county of residence, and then with the assessor of the other county, submitting at the same time two (2) copies of the first application, certified by the chancery clerk as specified by Section 27-33-23(f).

(e) He shall deliver to the assessor the application marked "original," the copy marked "duplicate," and the copy marked "triplicate."

(f) He shall retain the copy marked "quadruplicate" as evidence that the application was made and filed, which quadruplicate may be filed with the board if the original and duplicate are lost; and certified copies of the quadruplicate may be used when so ordered by the board, not later than the meeting of the board held in March of the year following the year in which the application was executed, under such rules and regulations as the commission shall prescribe.

(g) He shall state on the application the name of the owner of the property, and the number and status of all occupants of the home, other than the owner's family.

(h) He shall state the full name of the applicant, whether the same as the name of the owner or not.

(i) He shall give a parcel number, which shall clearly locate and identify it, and state the acreage contained, as prescribed in Section 27-33-27.

(j) He shall state the kind of title, or ownership right held, from whom and how obtained, and the names of all present owners.

(k) He shall state the number of book and page where the deed, or other conveyance or evidence of ownership, is of public record, or attach to both the original and duplicate application a certified copy of the conveyance by which title is claimed, or copies supported by affidavit of the holder, or by one who has seen and verified the original; or such other evidence of title as may be required by the commission; and the instrument by which title is claimed shall be placed of record, if it may be admitted to record.

(*l*) He shall state the price for which the property was sold and conveyed to the owner, the amount of the unpaid principal, if any, and the terms of payment thereof, if it was acquired by the owner after July 1, 1938, as evidenced by the date of the acknowledgment of the conveyance. The purchase price and the amount of unpaid principal shall not be required more than one (1) time.

(m) He shall state if any part of the dwelling or land is rented or leased, and the kind of business conducted in the home or on the land.

(n) He shall furnish all the information required by the application, which must be true and correct, and he must supply it in the event he does not prepare the application with his own hand. Except as otherwise provided in Section 27-33-33(2), the information given on the application must not be made or inserted by the assessor or by anyone, except as furnished by the applicant.

(o) He shall make the original application in person or in such manner as may be provided under the rules and regulations of the commission; or it may be made by his agent or attorney, duly constituted in writing, and a copy of such written authority, duly sworn to and acknowledged or attested by two (2) competent witnesses shall be attached to each the original, the duplicate, and the triplicate application for homestead exemption; but the husband or wife may sign for the other if living in the same dwelling.

(p) He shall make affidavit to the application and to the truth of all statements made and answers to questions contained therein, and the oath may be administered by the tax assessor, a member of the board of supervisors, or any other officer authorized by law to take acknowledgments.

(q) He shall give such other pertinent information as may be required by the commission; and he shall promptly give any information requested, and answer any question propounded by the assessor or member of the board of supervisors.

(r) When an applicant has filed a timely application, but has failed to make known his eligibility for an additional exemption as provided for in Section 27-33-67(2), then an application for additional homestead exemption may be filed under such rules and regulations as the commission shall prescribe.

(2) The board of supervisors may authorize a charge of Fifty Cents (50¢) per subsequent annual renewal application, which is returned by the applicant by mail, to be used toward defraying the expense of the mailing process of the subsequent annual renewal application. The charge provided for herein shall not be assessed against any person returning the subsequent annual renewal application in person.

(3) In addition to any other fine, imprisonment or sentence which may be imposed for violation of the Mississippi Homestead Exemption Law of 1946, any person who violates such law through fraudulent application or by willful failure to notify the tax assessor of changes in the status of the homestead, when required to do so under subsection (1)(a) of this section, shall be guilty of a felony and upon conviction may be punished by a fine of not more than Five Thousand Dollars ($5,000.00) or by imprisonment for not more than two (2) years, or both.

SOURCES: Codes, 1942, § 9729; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 15; Laws, 1954, Ex. ch. 37; Laws, 1956, ch. 285; Laws, 1960, ch. 470, § 1; Laws, 1975, ch. 457, § 5; Laws, 1976, ch. 328; Laws, 1976, ch. 426; Laws, 1979, ch. 302, § 6; Laws, 1984, ch. 453, § 12; Laws, 1991, ch. 390, § 2; Laws, 1991, ch. 602, § 3; Laws, 1993, ch. 324, § 1; Laws, 1993, ch. 513, § 4; Laws, 1998, ch. 450, § 1; Laws, 2002, ch. 436, § 1; Laws, 2003, ch. 327, § 2, eff from and after July 1, 2003.

Editor's Note — Laws of 1979, ch. 302, § 11, to take effect and be in force from and after January 1, 1979, provides as follows:

SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the income tax law or sales or use tax laws prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun; and the provisions of the income tax law or sales or use tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which the applicable sections of this act become effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith.

Laws of 1991, ch. 602, § 9, effective July 1, 1991, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1993, ch. 513, § 9, effective July 1, 1993, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1994, ch. 561, § 6, eff from and after passage (approved April 5, 1994), provides as follows:

"SECTION 6. The provisions of Section 27-33-31 to the contrary notwithstanding, any person who is granted a homestead exemption pursuant to the provisions of this act, may file for such exemption at any time prior to April 30, 1994."

Cross References — Time of accrual of right to exemption, see § 27-33-7.

Requirement that homeowner file application for exemption every year, unless not required to file as provided in this section, see § 27-33-7.

Application for exemption by person inducted into armed forces, see § 27-33-19.

Duties of Department of Revenue, see § 27-33-41.

Criminal offense for making oath to false application, see § 27-33-57.

Penalties for fraud, see § 27-33-59.

Time for reassessment and collection of taxes upon disallowance of exemption, see § 27-33-65.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any felony violation, see § 99-19-73.

ATTORNEY GENERAL OPINIONS

April 1 is statutory deadline for applying for homestead exemption and there is no authority for filing after that date, even when April 1 falls on Sunday. Weathers, April 18, 1990, A.G. Op. #90-0249.

Taxpayer, having failed to claim homestead exemption allowed by law, may not have homestead exemption allowed at later date; over sixty-five homestead exemption is created and defined by same statute that creates and defines "regular" homestead exemption and it must be affirmatively claimed before April 1 of each year. Bishop, May 11, 1990, A.G. Op. #90-0297.

Provisions of Section 27-33-31(2) are not retroactive to taxes lawfully accrued prior to July 1, 1991. Hollimon, July 8, 1992, A.G. Op. #92-0471.

A board of supervisors may not allow a homestead exemption for a taxpayer who does not comply with the provisions of Miss. Code Section 27-33-31. Williams, July 25, 1997, A.G. Op. #97-0438.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Homestead § 59 et seq.

9 Am. Jur. Legal Forms 2d, Homestead, § 135:15 et seq. (declarations of homestead exemption).

6 Am. Jur. Proof of Facts, Homestead, Proof No. 1 (existence of homestead exemption).

CJS. 40 C.J.S., Homesteads § 11 et seq.

§ 27-33-33. Duties of tax assessor; assessor authorized to amend homestead exemption applications under certain circumstances.

(1) The county tax assessor shall perform such duties as are generally required by him by this article and with respect to exempt homesteads, and the application therefor, and his duties are specifically defined as follows:

(a) He shall, in each year the land roll is made, require that all lands and buildings which have been or are claimed for homestead exemption be separately assessed on the land roll; and he shall, in the case of homestead lands not already separately assessed on the land roll, prepare proper notice to the board of supervisors requesting that the land assessment roll be changed so that all homestead property shall be separately assessed; and in the case of newly constructed dwellings, he shall carefully inspect the same and recommend to the board the value at which such dwellings should be assessed; and when rural lands are divided and a part included in the homestead exemption, he shall assess the respective tracts at the value used for cultivable lands and for uncultivable lands, and fairly assess homesteads and nonhomesteads at the same proportion to true value.

(b) He shall keep available a supply of the prescribed blank homestead exemption applications, and he shall require each applicant to properly execute the application in entire conformity with the requirements of Section 27-33-31.

(c) He shall aid the applicant in executing the application.

(d) He shall notify the applicant if an application for homestead exemption is incorrect or incomplete in any substantial particular, and require that it be properly and completely executed before accepting it for delivery to the clerk.

(e) He shall, when an application is accepted by him, retain the original, the duplicate and the triplicate. He shall endorse "filed" on the quadruplicate with the date and his official signature and return it to the applicant as evidence of the application and that it was filed.

(f) He shall promptly give to the board of supervisors any knowledge or information he may have, or any fact he may have knowledge of, bearing on the eligibility of the applying person or property and not revealed in the application; and note on the application any condition requiring special consideration.

(g) He shall, on the first day of each month, deliver to the clerk of the board of supervisors all originals and duplicates of applications for homestead exemption received and accepted by him during the preceding month.

(h) He shall attend all meetings of the board when any matter with respect to homestead exemptions is being considered by it and shall render such assistance and perform such services as the board may direct from time to time.

(i) He shall, at least ten (10) days but not more than thirty (30) days prior to April 1 of each year, publish notice in a newspaper having general circulation in the county in which he serves as tax assessor informing persons who are receiving homestead exemption that the tax assessor must be notified if changes have occurred in the status of the homestead in the property description, ownership, use or occupancy since January 1 of the preceding year and that, in the event such persons are still eligible for homestead exemption, a new application for homestead exemption must be filed.

(2)(a) If the tax assessor discovers a change in ownership in a portion of the homestead property that may result in the homestead exemption being applied to ineligible property and the owner of the homestead property fails to file a new application during the preceding year as required by Section 27-33-31, the tax assessor may amend the application to reflect such change on or before June 1 of that roll year.

(b) If parcel number changes occur due to reappraisal, mapping maintenance or updates, the tax assessor may amend the homestead application to reflect such changes on behalf of the owner of the homestead on or before June 1 of that roll year.

(c) If a change in ownership occurs because of the death of an owner and the surviving spouse of the owner is still eligible for homestead exemption and not required to file a new application, the tax assessor may amend the application by removing the name of the deceased spouse and adding the surviving spouse's birth date for the purpose of correcting the land roll and the supplemental roll.

(d) Should eligible property on an initial or renewed application fail to be listed due to a clerical error, such application may be amended by the tax assessor on behalf of the applicant to list such eligible property prior to the last Monday in August.

(e) Amendments made to applications under this subsection may be allowed by the board of supervisors and certified to the commission.

SOURCES: Codes, 1942, § 9730; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 16; Laws, 1960, ch. 470, § 2; Laws, 1975, ch. 457, § 6; Laws, 1984, ch. 453, § 13; Laws, 1991, ch. 390, § 3; Laws, 1991, ch. 602, § 4; Laws, 1993, ch. 324, § 2; Laws, 2003, ch. 327, § 1, eff from and after July 1, 2003.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an enacting error in the paragraph (d) of subsection (2). The word "to " was added following "prior". The Joint Committee ratified the correction at its July 8, 2004, meeting.

Editor's Note — Laws of 1991, ch. 602, § 9, effective July 1, 1991, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Assessor's duty to gather and record data, see § 27-1-19.

Assessment of taxes, see § 27-35-1 et seq.

ATTORNEY GENERAL OPINIONS

Miss. Code Section 27-33-33 provides the only obligations for tax assessors and collectors to notify persons regarding changes in homestead exemption status, and other forms of notice are not required. Williams, July 25, 1997, A.G. Op. #97-0438.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 27-33-35. Duties of clerk of board of supervisors.

The clerk of the board of supervisors shall keep all records and documents relating to homestead exemption matters coming before the board and perform such services as are generally required of him by Section 19-3-27, and in addition to such general duties:

(a) He shall receive applications for homestead exemption as they are delivered to him by the tax assessor, as required in Section 27-33-33(g); and before June 1 and in the manner prescribed by the rules and regulations of the Tax Commission, he shall forward the originals of all applications to the commission in Jackson, Mississippi, and (1) on the first day of each regular monthly meeting of the board of supervisors he shall present to it all applications for homestead exemption in his hands at that time for the board's consideration, as directed hereafter in this article, (2) when not in use, said applications shall be kept on file in alphabetical order, and (3) at the end of each current year he shall deliver duplicate homestead exemption applications that are no longer valid to the chancery clerk of the county to be held by him as a public record for at least three (3) years. This shall also include all applications disallowed by the board.

(b) He shall make the supplemental roll of homestead exemptions granted from the applications therefor (not from the land roll), the year the land roll is made, as soon as reasonably possible after the roll has been approved by the commission and has been finally approved of minute record by the board of supervisors, and only after the board has approved or disapproved all applications.

(c) He shall make the supplemental roll as prescribed by the commission.

(d) He shall make the proper entry in all columns on the supplemental roll, as defined in Section 27-33-11(n), and shall add truly and correctly each column of values of said roll and carry the results thereof to the grand total; and shall certify a copy of the supplemental roll to the tax collector in the same manner as the regular assessment roll is certified.

(e) He shall make in triplicate the supplemental roll and the original shall be forwarded immediately to the commission, one (1) copy shall be attached to the original land assessment roll, and the other copy shall be delivered to the tax collector as a legal part of the regular land assessment roll, as provided by Section 27-33-11(n). In counties having two (2) judicial districts, he shall make four (4) copies, one (1) for each judicial district, or separate rolls for each district, as may be directed by order of the board of supervisors. The original supplemental roll shall be forwarded to the commission no later than December 31 of each year.

(f) He shall also prepare two (2) certificates of tax loss from the approved applications for homestead exemption and from current legally completed land assessment roll, including the supplemental roll as defined in Section 27-33-11(n), which certificates shall be made on forms to be prescribed and furnished by the commission. One (1) certificate shall reflect the tax loss incurred because of the exemptions provided to applicants under the age of sixty-five (65) and not disabled as defined in this article, and the other shall reflect the tax loss incurred because of the exemptions provided to applicants aged sixty-five (65) or over and disabled as defined in this article.

The certificates shall show truly and correctly the total number of applications allowed for homestead exemption and the total tax loss resulting from applications allowed for homestead exemption; and such additional information as the commission may require.

The certificates shall be made in triplicate and be certified by him as being true and correct; and not later than December 31 of each year he shall forward the original certificates to the commission, deliver the duplicate certificates to the tax collector, and retain the triplicate certificates in his file as a public record. Certificates received later than June 1 of the year following the year in which the supplemental roll is made shall not be considered for reimbursement by the commission.

SOURCES: Codes, 1942, § 9731; Laws, 1940, ch. 127; Laws, 1946, ch. 261 § 17; Laws, 1975, ch. 457, § 7; Laws, 1984, ch. 453, § 14; Laws, 1991, ch. 390, § 4; Laws, 1991, ch. 602, § 5; Laws, 1993, ch. 324, § 3; Laws, 1993, ch. 513, § 5; Laws, 2001, ch. 334, § 2; Laws, 2002, ch. 369, § 1, eff from and after passage (approved Mar. 18, 2002.)

Editor's Note — Laws of 1991, ch. 602, § 9, effective July 1, 1991, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1993, ch. 513, § 9, effective July 1, 1993, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Compensation of clerk for copying assessment rolls, see § 25-3-21.

Tax Commission as meaning Department of Revenue, see § 27-3-4.

Duties of chancery clerk, see § 27-33-39.

Completion of assessment rolls, see § 27-35-123.

§ 27-33-37. Duties and powers of the board of supervisors.

The board of supervisors shall perform the duties imposed by this article on the members, the president, and the board as a unit, with the powers and authority granted and as necessary for the proper administration of the article, and specifically as set out in this section.

(a) At each regular monthly meeting the president of the board shall require of and receive from the clerk of the board all applications for homestead exemption having come into his hands as provided in Section 27-33-35 of this article.

(b) As soon as practicable after convening, at each regular monthly meeting, the board, in the light of public records, personal knowledge, information given by the assessor, and any other reliable source of information that may be available, shall examine each application which has been delivered to the clerk by the tax assessor, and pass upon its correctness and the eligibility of the property and of the person, under the law, as fully as may be done before final approval, after the land roll has been finally approved of minute record; and the board shall carefully consider and construe the relationship between buyers and sellers of property on which homestead exemption is sought, and the terms, conditions, rate of interest, payments made and to be made, of all conveyances doubtful in such respect. One (1) member of the board shall check each application prior to the time for final approval, and shall indicate if it should be approved, disapproved, or if it requires further investigation.

(c) If any application be found incorrect or incomplete in any particular required by law, or deficient in any respect, the board shall give notice immediately to the applicant, in writing, by mail, advising the applicant of the defect and the nature thereof, so that the applicant may correct it, if it can be corrected, before the time for final action by the board.

(d) The year in which the land roll is made, at the meeting of the board of supervisors at which the certificate of the department finally approving the land assessment roll is received and entered in its minutes, and at the September meeting the board of supervisors shall complete the consideration of each and every application for homestead exemption; and all applications, or claims, not clearly within the provisions and requirements of this article shall be disallowed by the board. Where it appears to the board, in a case or cases involving transactions completed after July 1, 1938, that conveyances have been made without bona fide consideration, and liens taken with questionable consideration or values, or where the payments on the principal have not been made as required, or there is evidence of any kind that the transactions were not bona fide in every particular, and were entered into for the purpose of obtaining a homestead exemption contrary to the letter and spirit of law, the application shall be disallowed.

(e) Each application shall be plainly endorsed "allowed" or "disallowed" as the case may be, over the date, and the signature of the president of the board, who may use a facsimile stamp for the purposes; and, in the space provided on the application for that purpose, there shall be entered for each assessment, (1) the page and line number of the assessment on the land roll, (2) the total number of acres, (3) the total assessed value of the land, (4) the assessed value of the buildings, (5) the total assessed value of the exempted land and buildings, (6) the assessed value of the land and buildings not exempted, (7) the name of the road district, if any, in which the property lies, and (8) the name of the school district in which the property lies.

(f) All applicants, whose applications are finally disallowed by the board, shall be given notice immediately by the board, in writing, by mail. Petitions and objections by applicants for correction or amendment shall be heard by the board at the next regular meeting of the board after notice that the application was finally disallowed.

(g) It shall not be necessary that an order be entered on the minutes of the board which allows or disallows an application as provided by paragraph (f) of this section, unless there be a division among the board members, then an order shall be entered on the minutes recording the aye and nay vote.

(h) The board of supervisors shall have, and is hereby given, the power and authority to summon and examine witnesses under oath, to examine records, and to do any and all other things necessary and proper to ascertain the facts with respect to any application, or claim, for homestead exemption presented to it. The board shall disallow any application for homestead exemption when it is found that the person or the property was ineligible, after the supplemental roll is approved and within one (1) year after that in which the application was executed; and it shall correct, likewise, any and all errors found in the supplemental roll. When an application is disallowed by the board after the supplemental roll has been approved, it shall give notice and proceed as in the case of a rejection by the department. A certified copy of the order finally disallowing an application, and making a correction in the supplemental roll must be adopted before the last Monday of August and shall be received by the department no later than September 15 of the year following the year in which the supplemental roll was made.

(i) At the first regular or special meeting of the board of supervisors held after the supplemental roll, required by Section 27-33-35 of this article, has been made, it shall examine the roll, and if found correct shall enter in the minutes an order approving the roll; and the applications disallowed shall be listed in the minutes by name and amount, with the reason for disallowance. A copy of the order shall be attached to the supplemental roll and sent to the department.

(j) All applicants whose applications are rejected for reimbursement of tax loss by the department, after having been allowed by the board, shall be given notice immediately by the board, in writing, by mail, with the reasons for the rejection by the department, and the applicants shall have thirty (30) days in which to file objections thereto, which objections shall be heard by the board at the same or the next regular meeting after objections are filed by the applicant. If the board finds that in its opinion the application should be allowed, it shall continue the matter in its record, and present its objection to the rejection, with evidence in support of it, to the department. All applications finally rejected by the department or by the Board of Tax Appeals shall be disallowed by the board, and entered of minute record.

(k) When the board shall receive notice from the department that an application for homestead exemption has been rejected by the department for reimbursement of tax loss, the board shall proceed in the manner prescribed in paragraph (j) of this section. Upon the hearing of objections of the applicant, if the board finds that the application should be disallowed, it shall so order and notify the department that its rejection has been "accepted." If the board is of the opinion that the application should be allowed, it shall notify the department that it objects to the rejection of the application, and shall submit, in writing, its reasons for the "objection." All such matters between the board and the department may be concluded by correspondence, or by personal appearance of the board, or one or more of its members, the clerk, or the assessor, or by a representative of the department present at any meeting of the board. If upon consideration of the objection, the department determines that the application for homestead exemption should be allowed; it will reverse the adjustment resulting from the department's rejection of the application and advise the board of this reversal. If upon consideration of the objection, the department determines that it had properly rejected the application for homestead exemption; it shall advise the board that its objection has been denied by the department. Within thirty (30) days from the date of the notice from the department advising the board that its objection had been denied, the board can appeal this denial of the objection by the department to the Board of Tax Appeals. The decision of the Board of Tax Appeals on the appeal by the board from the denial by the department of the board's objection to the department's rejection of an application for reimbursement of the tax loss shall be final, and the board and the department will either allow or disallow the application based on the decision of the Board of Tax Appeals.

(*l*) It shall be the duty of the board, and it is hereby given the power to order the tax collector, by an order entered on its minutes, to reassess, and list as subject to all taxes, the property described in an application for homestead exemption and as entered on the regular land assessment roll, under the following circumstances:

(i) When an application for homestead exemption is finally rejected by the department for reimbursement of tax loss which has been regularly approved by the board and entered on the supplemental roll; or

(ii) Where an application has been wrongfully allowed by the board.

When any property has been reassessed as herein provided, all additional taxes due as a result of such reassessment shall become due and be payable on or before the first day of February of the year following that in which notice to make the reassessment is issued; and if not paid, the tax collector shall proceed to sell the property for the additional taxes in the same manner and at the same time other property is sold for the current year's taxes, or he may collect the taxes by all methods by which other taxes on real estate may be collected. Provided, no penalty or interest shall be applied for any period prior to February 1 of the year following that in which the reassessment is made, and provided further, that such reassessment shall not take effect or become a lien on the property of bona fide purchasers or encumbrancers for value without notice thereof, unless there shall have been filed prior to their attaining such status a notice of rejection in the chancery clerk's office in the county in which the property is located, which notice shall be recorded and indexed as are deeds; but the applicant shall in all cases remain personally liable for such reassessment.

(m) The board of supervisors may employ the clerk of the board to collect and assemble data and information and to perform the services required of the board by paragraph (e) of this section and to make investigations required in connection with the duties of the board in determining the eligibility of homestead exemptions and to perform all other ministerial duties required of the board in connection with administering the Homestead Exemption Law and as directed by the board. If the board employs the clerk, he shall be paid out of the general county fund as follows: for the first two thousand (2,000) applications he may, in the discretion of the board, be paid not exceeding One Dollar ($1.00) each, for the next two thousand (2,000) applications he may be paid not exceeding Seventy-five Cents (75¢) each, for the next two thousand (2,000) applications he may be paid not exceeding Fifty Cents (50¢) each, for the next two thousand (2,000) applications he may be paid not exceeding Thirty-five Cents (35¢) each, all over the above number he shall be paid not exceeding Twenty-five Cents (25¢) each. The board shall require the assessor to correctly describe all lands included in any applications for homestead exemption, and to assess all such lands on the land assessment roll, separately from other lands, as required by this article; and to present to the board all proper and necessary notices for the correction of land descriptions on the roll, changes in ownership, and for increases and decreases in the assessments of exempt homes.

SOURCES: Codes, 1942, § 9732; Laws, 1940, ch. 127; Laws, 1942, ch. 123; Laws, 1946, ch. 261, § 18; Laws, 1958, ch. 211; Laws, 1966, ch. 642, § 1; Laws, 1968, ch. 361, § 33; Laws, 1984, ch. 453, § 15; Laws, 1988 Ex Sess, ch. 14, § 19; brought forward, Laws, 1991, ch. 390, § 5; Laws, 1991, ch. 602, § 6; Laws, 1993, ch. 513, § 6; Laws, 1997, ch. 345, § 1; Laws, 2009, ch. 492, § 66, eff from and after July 1, 2010.

Editor's Note — Laws of 1991, ch. 602, § 9, effective July 1, 1991, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1993, ch. 513, § 9, effective July 1, 1993, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Board of Tax Appeals generally, see § 27-4-1 et seq.

Time for reassessment and collection of taxes upon disallowance of exemption, see § 27-33-65.

Equalization of assessment rolls, see § 27-35-83 et seq.

ATTORNEY GENERAL OPINIONS

First two thousand homestead exemption applications filed would generate one dollar compensation for Chancery Clerk for each application; this compensation is limited to processing application and would not be owed for already approved prior year's applications. O'Neal Oct. 14, 1993, A.G. Op. #93-0606.

If new owner of real property is bona fide purchaser for value without notice, lien for additional taxes will not attach to property or impose personal liability on new owner; rather previous owner and homestead applicant is personally liable for reassessment. Tyner, March 17, 1994, A.G. Op. #94-0116.

If a new owner of a residence is a bona fide purchaser thereof for value and without notice of the rejection of the homestead exemption application upon such property, then the lien for additional taxes due to rejection of the application will neither attach to the property nor impose personal liability upon the new owner. Chapman, January 22, 1999, A.G. Op. #99-0015.

Protection of an original buyer, who was a bona fide purchaser without notice of a lien, extends to all subsequent purchasers of the property, even where they have notice of the lien. Harmon, Sept. 29, 2006, A.G. Op. 06-0480.

§ 27-33-39. Duties of the chancery clerk.

The chancery clerk of the county shall,

(a) Assist the board of supervisors in dealing with applications for homestead exemption, and present, on the call of the board, all records from his office necessary for the allowance or disallowance of any application for homestead exemption coming before the board; and

(b) Receive from the clerk of the board of supervisors the applications filed for homestead exemption, as provided in Section 27-33-35, paragraph (a), and preserve them accessible as public records for at least three (3) years.

SOURCES: Codes, 1942, § 9733; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 19.

Cross References — Duties of clerk of board of supervisors, see § 27-33-35.

§ 27-33-41. Duties and powers of Department of Revenue; administration; reimbursement.

The administration of this article is hereby vested in the Department of Revenue, and it shall have the power and the authority necessary to secure compliance with its provisions uniformly throughout the state. The department shall, in addition to its general duties of administration of the article, do the specific things set out in this section:

(a) It shall adopt and issue to tax assessors, clerks, boards of supervisors, and all other officers or offices to which this article applies, rules and regulations, not inconsistent with the provisions of the article, affecting the applications and all proceedings, records, hearings and other pertinent subjects, relating to property for which a homestead exemption is claimed; and such rules and regulations shall be observed by such officers, boards and offices, in all respects, and in the performance of any and all duties imposed and powers granted by this article.

(b) It shall prescribe the form of and furnish suitable application forms, or blanks, for the purpose of carrying out the provisions of this article, and shall deliver to each assessor a sufficient number of such blanks for the use of homeowners.

(c) It shall have authority and it shall be its duty to examine all applications for homestead exemption allowed under this article, to determine if the provisions of the article have been complied with by the applicant, the tax assessor, the board of supervisors, the clerk, and all others, and if the exemptions have been lawfully allowed; and it shall reject for reimbursement of tax loss any exemption allowed by the board which does not conform to the requirements of law in every substantial particular or for which no application has been sent to the department as required in Section 27-33-35(a), and shall correct or have corrected any errors; and the tax loss to be reimbursed shall be adjusted to accord with the findings of the department.

When an application is rejected, notice thereof shall be given as provided by this section, and the acceptance or objection by the board shall be determined as provided by Section 27-33-37(k).

(d) It shall have authority to examine the assessment rolls, any account register, file, document, record or paper relating to receipts and disbursements of the taxing unit or any and all matters relating to homestead exemptions allowed and tax losses to be reimbursed. It shall also have the authority to examine any report or return received by the department to verify any claims made on homestead exemption applications.

(e) It shall have the authority to summon and examine under oath any officer or other person with respect to any matter bearing upon the exemption of a home or homes, and to do any and all other things necessary and proper to ascertain the facts with respect to any application or claim for homestead exemption; and it may require the board to furnish any information or document necessary to the performance of its duties or the correct determination of any question before it to which the board is a party.

(f) The reimbursement for the annual tax loss to the taxing units shall be due and payable in two (2) installments; the first on March 1 and the second on September 1 of each year. The clerk's certificate of tax loss when in accord with the supplemental roll and the applications as filed with the department shall constitute a request by the board for reimbursement of the tax loss. The department shall not pay any reimbursement for annual tax loss to any taxing unit to which Section 27-39-203(7) applies until after the taxing unit has complied with the notice requirement of Section 27-39-203(7).

(g) It shall, on or before the first day of March each year, certify to the Department of Finance and Administration the amount of the first installment to be paid to each taxing unit in the state, which shall be one-half (½) of the amount due, with adjustments, which is the amount of the first installment less any charges against the account and plus any credits by reason of previous charges which have been cancelled. However, if the copy of the county land roll, the supplemental roll and the clerk's certificate of tax loss have not been filed with and approved by the department by February 1, the department shall be allowed thirty (30) days after the filing of the rolls and the said certificate in which to perform the duties hereby imposed.

(h) It shall, on or before the first day of September each year, certify to the Department of Finance and Administration the amount of the second installment to be paid to each taxing unit in the state, which shall be the remainder of the amount due with adjustments, which is an amount equal to the first installment less any charges against the account and plus any credits by reason of previous charges which have been cancelled. Adjustments, either charges or credits, against the amount of tax loss to any taxing unit may be made at any time as provided in paragraph (j) of this section.

(i) In the event an adjustment in the amount of the tax loss has been determined by the department, it shall give notice, in writing, to the board of supervisors, which notice shall be considered by the board at its next meeting, regular, adjourned or special. If the board accepts the adjustment, it shall promptly so advise the department, using such form as may be prescribed and furnished by the department. If the board objects to the adjustment, it shall promptly so advise the department, using such forms as may be prescribed and furnished by the department, stating in detail the grounds for its objection and providing any supporting documentation for its objection. Upon receipt of the board's objection, the department will consider same and determine whether or not the objection is valid. All such matters between the board and the department on this objection may be concluded by correspondence, or by personal appearance of the board, or one or more of its members, the clerk, or the assessor, or by a representative of the department present at any meeting of the board. If upon consideration of the objection, the department determines that the application for homestead exemption should be allowed; it will reverse the adjustment resulting from the department's rejection of the application and advise the board of this reversal. If upon consideration of the objection, the department determines that it had properly rejected the application for homestead exemption; it shall advise the board that its objection has been denied by the department. Within thirty (30) days from the date of the notice from the department advising the board that its objection had been denied, the board can appeal this denial of the objection by the department to the Board of Tax Appeals. At any hearing on the appeal by the board to the Board of Tax Appeals on the department's denial of the board's objection to the department's rejection of an application for homestead exemption, the decision of the department to reject the homestead exemption application shall be prima facie correct.

(j) It shall be the duty of the department and it shall have authority to charge the account of any taxing unit with amounts of homestead exemption tax loss claimed by the taxing unit in the certificate of tax loss and the supplemental roll and to deduct the amount from subsequent installments, either first or second. Such charges shall be made when homestead exemption applications are rejected, in whole or in part, for reimbursement of tax loss or when errors are discovered in the supplemental roll or clerk's certificate of tax loss.

(k) The authority of the department to reject an application for reimbursement of tax loss shall not be exercised later than one (1) year after the first day of January of the year next following that in which the application was filed by the applicant; but this limitation shall not apply in cases of fraud, nor where the same person was granted exemption on two (2) separate homes.

Notice of adjustments in tax loss payments and notice of applications rejected shall be given by mail, addressed to the clerk of the board, and the notice directed to the president of the board of supervisors of the county. The date of mailing shall be the date of the notice.

(*l*) The department shall file and preserve full, complete and accurate records of all tax loss payments and adjustments in tax loss payments made under the provisions of this article, including the certificates of tax loss for a period of three (3) years from the date thereof. The department shall file and preserve for a period of three (3) years all applications for homestead exemption filed with it and copies of all supplemental rolls, counting from the first day of January of the year in which they are required to be executed or made. All records enumerated may be destroyed by the department, when kept for the time required. All other documents, records, papers and correspondence may be destroyed in accordance with approved record retention schedules.

(m) The department shall, on or before June 1 of any year, pay the second installment, or a part thereof, to any school taxing unit upon submission to the department of proof, in the form of a certificate of necessity, executed by the county superintendent of education for the county general school fund, or for a county school district fund, and by the city superintendent of schools for a municipal separate school district, that there is not sufficient money in the maintenance fund of the taxing unit to pay the salaries of teachers and school bus drivers for the current school term. Such payment shall be made as provided in paragraph (h) of this section.

(n) The county tax collectors shall enter, or cause to be entered, all transactions regarding the titling or registration of vehicles into the statewide telecommunications system in compliance with the provisions of Section 63-21-18. Failure of any tax collector to comply with the provisions of this paragraph shall subject the county to the withholding of reimbursements of homestead exemption tax loss as provided under Section 63-21-18.

SOURCES: Codes, 1942, § 9734; Laws, 1940, ch. 127; Laws, 1942, ch. 130; Laws, 1946, ch. 261, § 20; Laws, 1975, ch. 457, § 8; Laws, 1984, ch. 453, § 16; Laws, 1990, ch. 415, § 2; Laws, 1991, ch. 602, § 7; Laws, 2009, ch. 492, § 67; Laws, 2014, ch. 449, § 2, eff from and after July 1, 2014.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected typographical errors in the internal statutory references by substituting "Section 27-39-203(7)" for "Section 27-39-203(7) of this act" both times it appears in (f). The Joint Committee ratified the correction at its July 24, 2014, meeting.

Editor's Note — Laws of 1991, ch. 602, § 9, effective July 1, 1991, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14, Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of Revenue, see § 27-3-1 et seq.

Board of Tax Appeals, see § 27-4-1 et seq.

Homestead exemptions, see §§ 27-33-3 and 27-33-67 et seq.

Penalties for fraud, see § 27-33-59.

Filing of recapitulation with Department of Revenue by board of supervisors, see § 27-35-111.

Tax loss under general county ad valorem tax levy entitled to reimbursement as homestead exemption, see § 27-39-303.

Levy to defray cost of reappraisal not being reimbursable under Homestead Exemption Law, see § 27-39-325.

Payment of funds of one governmental authority into the funds of another for establishment of regional vocational education centers not being charged against reimbursements under this section, see § 37-31-77.

Authority of state auditor to withhold funds from political subdivision which is in arrears in payment of loan made under water pollution abatement grant program, see § 49-17-69.

Water Pollution Control Revolving Fund, see § 49-17-87.

Forfeiture of right to receive homestead exemption upon default in repayment of loan from railroad revitalization fund, see § 57-43-11.

Forfeiture by municipality of right to receive homestead exemption reimbursement as result of failing to meet loan repayment obligations under the Mississippi Business Investment Act, see § 57-61-15.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. Validity.
7. Construction and application.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. Validity.

Statute providing that one half of all ad valorem taxes collected for road purposes by or for a county on property within a municipality, the streets of which are worked at the expense of the municipality, shall be paid over to the municipality, was neither repealed nor amended by the Homestead Exemption Law, with the provision therein relating to reimbursement of the taxing units by the state for tax loss resulting from being prevented from collecting ad valorem taxes on homestead property for road purposes. Coahoma County v. City of Clarksdale, 192 Miss. 851, 7 So. 2d 882 (1942).

7. Construction and application.

When a county received a sum of money from the state as a reimbursement for tax loss by reason of its being prevented by the Homestead Exemption Law from collecting ad valorem taxes for road purposes on homestead property in a municipality, the funds so received were in lieu of such ad valorem taxes, and, in view of the statute providing that one half of all ad valorem taxes collected by or for a county on property within a municipality for road purposes should be paid over to the municipality, one half of the amount thus received from the state should have been paid over by the county to the municipality. Coahoma County v. City of Clarksdale, 192 Miss. 851, 7 So. 2d 882 (1942).

§ 27-33-43. Repealed.

Repealed by Laws, 1984, ch. 453, § 22, eff from and after January 1, 1985. [Codes, 1942, § 9734.5; Laws, 1952, ch 423]

Editor's Note — Former § 27-33-43 related to duties and powers of state tax commission as to exemptions where municipality extends corporate limits.

§ 27-33-45. Duties of the state auditor.

The auditor shall, upon receipt of the requisitions of the commission provided for in paragraphs (g) and (h) of Section 27-33-41, issue his warrants on the state treasurer to pay to the taxing units the amount set out in the requisitions. The warrant shall be made payable to the official depository for the funds of the taxing unit. He shall issue no warrant for such purpose except upon the requisition of the commission.

SOURCES: Codes, 1942, § 9735; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 21; Laws, 1984, ch. 453, § 17, eff from and after January 1, 1985.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 27-33-47. Duties of the state treasurer.

The treasurer shall pay the warrants of the state auditor provided for in Section 27-33-45 of this article, out of any monies in the state treasury appropriated for the purposes provided by this article.

SOURCES: Codes, 1942, § 9736; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 22.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — State treasurer's duties generally, see § 7-9-9.

§ 27-33-49. Duties of the attorney general.

Except as otherwise authorized in Section 7-5-39, the Attorney General of the state shall be the attorney for the commission and shall represent it in any proceedings before any court. In any hearing before the commission, where the services of an attorney are desired or needed, the Attorney General shall attend on behalf of the commission. The Attorney General shall construe any doubtful or conflicting provisions of this article, and his opinion shall be controlling on all officers.

SOURCES: Codes, 1942, § 9737; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 23; Laws, 2012, ch. 546, § 10, eff from and after July 1, 2012.

Cross References — Attorney general's representation of tax commission, see § 25-31-19.

§ 27-33-51. Duties of tax collectors.

The tax collectors of the several counties of the state shall perform such duties as are generally imposed upon them by the laws of this state with respect to the collection of taxes and the payment of same into the proper accounts; and in addition to such general duties:

(a) He shall, upon receipt of a duly certified copy of the order of the board of supervisors, adopted under the provisions of Section 27-33-37(*l*), correct the supplemental roll as required by said order and list as subject to all taxes the assessed value of homes in all cases to the extent directed by the order of the board; and he shall change the supplemental roll for the year, or years, in accord with the order of the board, so as to show the additional taxes due and he shall prepare a tax receipt therefor, with proper references thereon to the board, the year or years for which the additional taxes are levied, and to the page and line of the supplemental roll where the assessment is listed.

(b) He shall collect all additional taxes on or before the first day of February of the year following that in which the notice is issued to make the correction and reassessment, and the collection of taxes shall be made in the same manner and at the same time taxes are collected on other property, if any, of the same owner; and he shall give to the taxpayer a separate receipt for such additional taxes.

(c) He shall give to all taxpayers having an exempted home under the terms of this article a tax receipt made in the manner and form directed by Sections 27-41-33 and 27-41-35; and this requirement shall apply to receipts given for additional taxes as provided by paragraphs (a) and (b) of this section.

(d) He shall collect all taxes due to the extent required by this article; and it shall be his duty to collect said taxes, including additional taxes as provided by paragraphs (a) and (b) of this section, by sale of the property in the manner provided by law in the case of other real property, and by any other method or means provided by law for the collection of taxes levied against real property.

SOURCES: Codes, 1942, § 9737.5; Laws, 1946, ch. 261, § 24; Laws, 1968, ch. 361, § 34; Laws, 1975, ch. 457, § 9; Laws, 1984, ch. 453, § 18, eff from and after January 1, 1985.

Cross References — Collection of taxes, see § 27-41-1 et seq.

§ 27-33-53. Repealed.

Repealed by Laws, 1984, ch. 453, § 22, effective from and after January 1, 1985.

[Codes, 1942, § 9737.7; Laws, 1948, ch. 269, §§ 1-4; Laws, 1968, ch. 361, § 35]

Editor's Note — Former § 27-33-53 related to apportionment of reimbursement for tax loss.

§ 27-33-55. Appeals.

Any adverse determination in connection with the administration of this article may be appealed from by the one aggrieved, in the manner provided by the general laws of the state.

SOURCES: Codes, 1942, § 9738; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 25.

Cross References — Appeals from tax assessments generally, see § 11-51-77.

RESEARCH REFERENCES

Am Jur. 40 Am. Jur. 2d, Homestead § 188.

CJS. 40 C.J.S., Homesteads § 139.

§ 27-33-57. False oaths.

Any person who shall make oath to a false or fraudulent application for homestead exemption shall be guilty of perjury.

SOURCES: Codes, 1942, § 9739; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 26.

Cross References — Application for exemption, see § 27-33-31.

Crime of perjury, see § 97-9-59.

JUDICIAL DECISIONS

1. Grand jury.

Trial court properly denied a public utility's motion to quash a grand jury subpoena because issuance of the subpoena was a lawful exercise of the grand jury's investigative authority, and the evidence was relevant to its investigation and had the potential to result in criminal indictments; if the grand jury was investigating to determine if state laws regarding the tax collection were being followed, it was acting within the scope of its authority and its actions were unquestionable. Entergy Miss., Inc. v. State, 132 So. 3d 568 (Miss. 2014).

§ 27-33-59. Penalties.

(a) Any person who shall knowingly make any false or fraudulent claim for exemption under the provisions of this article or make any false statement or representation, or concealment of a material fact in support of such claim; or any person who shall assist another in the preparation of any false or fraudulent claim; or enters into any collusion with another by the execution of a fictitious deed, deed of trust, or mortgage, or shall otherwise aid, assist or abet any person in the preparation or presentation of any false or fraudulent claim for exemption shall be guilty of a misdemeanor. Upon conviction such person shall be punished by a fine not exceeding Five Hundred Dollars ($500.00) or six (6) months imprisonment.

(b) Any person who obtains a homestead exemption by any means referred to in this section or in any manner other than as provided by this article shall be liable for double the amount of the taxes lost by reason of the illegal exemption, and the property shall be liable for the said amount, which may be collected by suit or by sale of the property.

(c) If a revision of tax loss be occasioned by disallowance by the commission of a fraudulent exemption, or if the revision is caused by knowing noncompliance with provisions of this article on the part of officers in the allowance of exemptions, then any reduction in the total amount of tax loss may be made by the commission, in its discretion, in double the amount of the reduction of the total tax loss. Such reduction shall be made from the second installment or any subsequent payment due the taxing unit. But in no instance shall the reduction in tax loss be less than the amount of taxes due on such fraudulent or illegal exemption.

SOURCES: Codes, 1942, § 9740; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 27; Laws, 1952, ch. 416; Laws, 1954, ch. 387; Laws, 1956, ch. 295; Laws, 1975, ch. 457, § 10; Laws, 1980, ch. 505, § 2; Laws, 1984, ch. 453, § 19, eff from and after January 1, 1985.

Cross References — Homestead exemptions, see §§ 27-33-3 and 27-33-67 et seq.
Duties of Department of Revenue, see § 27-33-41.
Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-33-60. Repealed.

Repealed by Laws, 1984, ch. 453, § 22, eff from and after January 1, 1985. [Laws, 1980, ch. 505, § 3]

Editor's Note — Former § 27-33-60 provided for reimbursements. For current provisions concerning reimbursements, see §§ 27-33-77 and 27-33-79.

§ 27-33-61. Public attorneys to sue.

Any county attorney, district attorney, or the attorney general shall bring suit and prosecute it to a conclusion, in the name of the state, or county, or district, when requested to do so by a member of the board of supervisors, or the state tax commission, if upon investigation the suit appears to be meritorious.

SOURCES: Codes, 1942, § 9741; Laws, 1940, ch. 127; Laws, 1946, ch. 261, § 28.

§ 27-33-63. Additional restrictions, limitations and changes.

(1) The provisions of the "Homestead Exemption Law of 1946" are hereby modified and clarified as stated in the subsequent subsections of this section, and all restrictions, limitations and changes made by this section are supplemental to and cumulative of the provisions now contained in said law of 1946.

(2) A home, as defined in this article, shall be the legal domicile of the owner and his family group, excepting in those cases where the law permits exemption to an owner who maintains a home for dependents of the claimant or where the law permits an exemption to an owner who holds a remainder interest in the dwelling and eligible land as defined in Section 27-33-17(h). All eligible claimants for homestead exemption in all instances shall have their legal domicile in the State of Mississippi, shall be subject to the jurisdiction of this state, shall be subject to and comply with the income tax laws, shall be subject to and comply with the road and bridge privilege tax laws thereof, and shall not be an elector in any other state.

No claimant for homestead exemption shall be eligible for exemption if the claimant or the claimant's spouse has failed to comply with the income tax laws of this state or if the claimant or the claimant's spouse claims that he or she is a resident of some other state when assessed with income taxes in this state.

No claimant for homestead exemption shall be eligible for exemption if the claimant or the claimant's spouse in the homestead has failed to comply with the road and bridge privilege tax laws or asserts that any motor vehicle owned by and/or in the possession of any one or more of such persons, in whole or in part, has its legal situs in some other state. Displaying a license plate of some other state on such motor vehicle shall be prima facie proof that such assertion has been made.

Homestead exemption applications disapproved or disallowed exclusively because of the failure of the claimant or the claimant's spouse to comply with the income tax laws and/or road and bridge privilege tax laws of this state may be subsequently approved or allowed, as the case may be, when sufficient proof is submitted that such tax laws have been fully complied with by such persons.

(3) The provisions of this section shall apply to and govern the taxes levied for the fiscal year ending in 1948 and to each fiscal year thereafter.

SOURCES: Codes, 1942, § 9743.2; Laws, 1948, ch. 465, §§ 1-5; Laws, 1958, ch. 568; Laws, 1962, ch. 592; Laws, 1975, ch. 457, § 11; Laws, 1984, ch. 453, § 20; Laws, 1991, ch. 602, § 8; Laws, 1994, ch. 561 § 5, eff from and after passage (approved April 5, 1994).

Editor's Note — Laws of 1991, ch. 602, § 9, effective July 1, 1991, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1994, ch. 561, §§ 6, 7, eff from and after passage (approved April 5, 1994), provide as follows:

"SECTION 6. The provisions of Section 27-33-31 to the contrary notwithstanding, any person who is granted a homestead exemption pursuant to the provisions of this act, may file for such exemption at any time prior to April 30, 1994.

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Income tax, see § 27-7-1 et seq.

Motor vehicle privilege tax law, see § 27-19-1 et seq.

Definition of "home," see § 27-33-19.

What constitutes a home generally, see §§ 27-33-19, 27-33-21.

Duties of Department of Revenue, see § 27-33-41.

ATTORNEY GENERAL OPINIONS

Under law person could obtain approval of their homestead exemption, but this applies only to current year; approval would not entitle taxpayer to refund for taxes already paid. Batey, August 29, 1990, A.G. Op. #90-0608.

A municipal tax sale of a parcel is subservient to a county tax sale of the same parcel; when both the municipal and county tax sales are held the same day with a different purchaser at each, and neither sale is redeemed, the purchaser at the county sale obtains a superior title to the purchaser at the municipal tax sale; and if no bid is received at a municipal tax sale, the property must be struck off to the municipality. Griffith, April 2, 1999, A.G. Op. #99-0144.

The grantee in a county tax deed takes priority over the grantee in a city tax deed. Shackelford, June 4, 1999, A.G. Op. #99-0268.

A homestead exemption claimant who is a bona fide resident of Mississippi, who owns and is occupying a home legally assessed on the land roll, but is displaying a license plate from another state on a vehicle, should be removed from the homestead exemption roll until such time he or she submits proof of full compliance with the Mississippi road and bridge privilege tax laws. Schrimpshire, March 30, 2007, A.G. Op. #07-00162, 2007 Miss. AG LEXIS 65.

§ 27-33-65. Time for reassessment and collection of taxes upon disallowance of exemption.

(1) Boards of supervisors are hereby authorized at any time within one (1) year from the time the state tax commission has disallowed an application for homestead exemption to re-assess the same as subject to all taxes and to order the tax collector to collect any and all additional taxes due as a result of such re-assessment, and to require that all such taxes shall be collected on or before the 1st day of February following the date of such re-assessment. Provided, that this authority shall apply to all homestead exemption applications disallowed for any year prior to 1946 and shall be exercised in the manner and form as specified in Section 27-33-37, Mississippi Code of 1972.

(2) All assessments or re-assessments of homestead exemptions for more than one (1) year made as provided by Section 27-33-37 shall be void and the same are hereby abated; and additional taxes may be collected upon such re-assessment for not more than one (1) year.

SOURCES: Codes, 1942, § 9743.3; Laws, 1946, ch. 238, §§ 1, 2.

Cross References — State tax commission as meaning the Department of Revenue, see § 27-3-4.

§ 27-33-67. Exemptions for persons over 65 years of age and disabled.

(1) Each qualified homeowner under sixty-five (65) years of age on January 1 of the year for which the exemption is claimed, and who is not totally disabled as herein defined shall be exempt from ad valorem taxes in the amount prescribed in Section 27-33-69, 27-33-71, 27-33-73 or 27-33-75, whichever is applicable to the year for which the exemption is claimed.

(2) Each qualified homeowner who has reached sixty-five (65) years of age on or before January 1 of the year for which the exemption is claimed, who is totally disabled as herein defined, or who is the unremarried surviving spouse of a homeowner referred to in paragraph (a) of this subsection (2), shall be exempt from ad valorem taxes in the manner prescribed in Section 27-33-69, 27-33-71, 27-33-73 or 27-33-75, whichever is applicable to the year for which the exemption is claimed.

To qualify for the exemptions provided for in this article because of disability, the homeowner must present proper proof of any of the following:

(a) Service-connected, total disability as an American veteran who has been honorably discharged from military service.

(b) Classification as totally disabled under the federal Social Security Act (42 USCS Section 416(i)), the Railroad Retirement Act or any other federal act approved by the Department of Revenue.

(i) If a person is eligible for classification as totally disabled under the federal acts referred to in this subsection (2)(b), but does not qualify to receive benefits thereunder because his annual income exceeds an amount set as the maximum allowed in qualifying to receive the benefits, then he is eligible for the disability exemptions specified in this article. Proper proof of such eligibility shall be determined by the Department of Revenue.

(ii) If a person is eligible for classification as totally disabled under the federal Social Security Act (42 USCA Section 416(i)), but does not qualify to receive benefits thereunder only because he has not made the necessary social security contributions, then he is eligible for the disability exemptions specified in this article. Proper proof of such eligibility shall be determined by the Department of Revenue. The provisions of this subparagraph (ii) shall apply to any homeowner filing for the disability exemption on or after January 1, 1992.

(c) Classification as totally disabled under the provisions of a retirement plan that is considered to be qualified under the United States Internal Revenue Code. The determination of whether or not a retirement plan is so qualified shall be made by the Department of Revenue.

(d) Classification as totally disabled as determined by the Department of Revenue pursuant to rules and regulations adopted by the Department of Revenue.

Proper proof of classification as totally disabled under the federal acts referred to in subsection (2)(b) or (2)(c), including proof of the total disability and of eligibility to qualify to receive benefits under the relevant federal act or qualified retirement plan, shall be determined by the Department of Revenue.

The property owned jointly by husband and wife and property owned in fee simple by either spouse, if either spouse shall fulfill the age or disability requirement, shall be eligible for the exemption allowed in this article in full. On all other jointly owned property, the amount of the allowable exemption shall be determined on the basis of each individual joint owner's qualifications and pro rata share of the property.

(3) Those homeowners and unremarried surviving spouses described in subsection (2) of this section and who qualify for the exemptions under this article shall also be exempt from the forest acreage tax authorized by Section 49-19-115 applicable to property included in the homestead.

SOURCES: Laws, 1984, ch. 453, § 2; Laws, 1993, ch. 513, § 7; Laws, 1994, ch. 500, § 1; Laws, 1995, ch. 522, § 1; Laws, 2014, ch. 451, § 2, eff from and after Jan. 1, 2015.

Editor's Note — Laws of 1993, ch. 513, § 9, effective July 1, 1993, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2014, ch. 451, § 3, effective January 1, 2015, provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Right to file additional homestead exemption for exemption provided for in this section when applicant otherwise filed timely application, see § 27-33-31.

Reimbursement for tax losses, see §§ 27-33-77 and 27-33-79.

Water Pollution Control Revolving Fund, see § 49-17-87.

Exemption from forest acreage tax, see § 49-19-115.

Federal Aspects — Eligibility for classification as totally disabled under the Railroad Retirement Act, see 42 USCS § 416(i).

ATTORNEY GENERAL OPINIONS

A municipality must allow a taxpayer who is entitled to a homestead exemption under Section 27-33-67(2) an exemption from municipal ad valorem taxes in the maximum amount allowed pursuant to the tables in Sections 27-33-69, 27-33-71, 27-33-73, or 27-33-75; in other words, the taxpayer should be totally exempt from municipal ad valorem taxes up to the maximum amount allowed in the tables, not exempt up to the amount of the reimbursement to the municipality per homestead exemption applicant. Applewhite, July 14, 2000, A.G. Op. #2000-0203.

§ 27-33-69. Tax table for exemptions claimed in 1985 calendar year for which reimbursement is made in 1986 calendar year.

(1) Qualified homeowners described in subsection (1) of Section 27-33-67 shall be allowed an exemption from ad valorem taxes according to the following table:

TRUE VALUE OF HOMESTEAD	ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
$ 1 — $ 1,000	$ 1 — $ 150	$ 6.00
1,001 — 2,000	151 — 300	12.00
2,001 — 3,000	301 — 450	18.00
3,001 — 4,000	451 — 600	24.00
4,001 — 5,000	601 — 750	30.00
5,001 — 6,000	751 — 900	36.00
6,001 — 7,000	901 — 1,050	42.00
7,001 — 8,000	1,051 — 1,200	48.00
8,001 — 9,000	1,201 — 1,350	54.00
9,001 — 10,000	1,351 — 1,500	60.00
10,001 — 11,000	1,501 — 1,650	66.00
11,001 — 12,000	1,651 — 1,800	72.00

TRUE VALUE OF HOMESTEAD	ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
12,001 — 13,000	1,801 — 1,950	78.00
13,001 — 14,000	1,951 — 2,100	84.00
14,001 — 15,000	2,101 — 2,250	90.00
15,001 — 16,000	2,251 — 2,400	96.00
16,001 — 17,000	2,401 — 2,550	102.00
17,001 — 18,000	2,551 — 2,700	108.00
18,001 — 19,000	2,701 — 2,850	114.00
19,001 — 20,000	2,851 — 3,000	120.00
20,001 — 21,000	3,001 — 3,150	126.00
21,001 — 22,000	3,151 — 3,300	132.00
22,001 — 23,000	3,301 — 3,450	138.00
23,001 — 24,000	3,451 — 3,600	144.00
24,001 — 25,000	3,601 — 3,750	150.00
25,001 — 26,000	3,751 — 3,900	156.00
26,001 — 27,000	3,901 — 4,050	162.00
27,001 — 28,000	4,051 — 4,200	168.00
28,001 — 29,000	4,201 — 4,350	174.00
29,001 — 30,000	4,351 — 4,500	180.00
30,001 — 31,000	4,501 — 4,650	186.00
31,001 — 32,000	4,651 — 4,800	192.00
32,001 — 33,000	4,801 — 4,950	198.00
33,001 — 34,000	4,951 — 5,100	204.00
34,001 — 35,000	5,101 — 5,250	210.00
35,001 — 36,000	5,251 — 5,400	216.00
36,001 — 37,000	5,401 — 5,550	222.00
37,001 — 38,000	5,551 — 5,700	228.00
38,001 — 39,000	5,701 — 5,850	234.00
39,001 — 40,000	5,581 — 6,000	240.00
40,001 — 41,000	6,001 — 6,150	246.00
41,001 — 42,000	6,151 — 6,300	252.00
42,001 — 43,000	6,301 — 6,450	258.00
43,001 — 44,000	6,451 — 6,600	264.00
44,001 — 45,000	6,601 — 6,750	270.00
45,001 — 46,000	6,751 — 6,900	276.00
46,001 — 47,000	6,901 — 7,050	282.00
47,001 — 48,000	7,051 — 7,200	288.00
48,001 — 49,000	7,201 — 7,350	294.00
49,001 and above	7,351 and above	300.00

Assessed values shall be rounded to the next whole dollar (Fifty Cents (50¢) rounded to the next highest dollar) for the purposes of the above table.

One-half (½) of the exemption allowed in the above table shall be from taxes levied for school district purposes and one-half (½) shall be from taxes levied for county general purposes, roads and bridges, junior colleges and agricultural high schools in the proportion that the number of mills levied for each such purpose bears to the total mills levied for all such purposes herein enumerated, except for school district purposes.

(2) Qualified homeowners described in subsection (2) of Section 27-33-67 shall be allowed an exemption from all ad valorem taxes on not in excess of Seven Thousand Five Hundred Dollars ($7,500.00) of the assessed value of the homestead property.

(3) This section shall only apply to exemptions claimed in the 1985 calendar year for which reimbursement is made in the 1986 calendar year.

SOURCES: Laws, 1984, ch. 453, § 3, eff from and after January 1, 1985.

ATTORNEY GENERAL OPINIONS

A municipal tax sale of a parcel is subservient to a county tax sale of the same parcel; when both the municipal and county tax sales are held the same day with a different purchaser at each, and neither sale is redeemed, the purchaser at the county sale obtains a superior title to the purchaser at the municipal tax sale; and if no bid is received at a municipal tax sale, the property must be struck off to the municipality. Griffith, April 2, 1999, A.G. Op. #99-0144.

A municipality must allow a taxpayer who is entitled to a homestead exemption under Section 27-33-67(2) an exemption from municipal ad valorem taxes in the maximum amount allowed pursuant to the tables in Sections 27-33-69, 27-33-71, 27-33-73, or 27-33-75; in other words, the taxpayer should be totally exempt from municipal ad valorem taxes up to the maximum amount allowed in the tables, not exempt up to the amount of the reimbursement to the municipality per homestead exemption applicant. Applewhite, July 14, 2000, A.G. Op. #2000-0203.

§ 27-33-71. Tax table for exemptions claimed in 1986 calendar year for which reimbursement is made in 1987 calendar year.

(1) Qualified homeowners described in subsection (1) of Section 27-33-67 shall be allowed an exemption from ad valorem taxes according to the following table:

ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
$ 1 — $ 150	$ 6.00
151 — 300	12.00
301 — 450	18.00
451 — 600	24.00
601 — 750	30.00
751 — 900	36.00
901 — 1,050	42.00
1,051 — 1,200	48.00
1,201 — 1,350	54.00
1,351 — 1,500	60.00

ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
1,501 — 1,650	66.00
1,651 — 1,800	72.00
1,801 — 1,950	78.00
1,951 — 2,100	84.00
2,101 — 2,250	90.00
2,251 — 2,400	96.00
2,401 — 2,550	102.00
2,551 — 2,700	108.00
2,701 — 2,850	114.00
2,851 — 3,000	120.00
3,001 — 3,150	126.00
3,151 — 3,300	132.00
3,301 — 3,450	138.00
3,451 — 3,600	144.00
3,601 — 3,750	150.00
3,751 — 3,900	156.00
3,901 — 4,050	162.00
4,051 — 4,200	168.00
4,201 — 4,350	174.00
4,351 — 4,500	180.00
4,501 — 4,650	186.00
4,651 — 4,800	192.00
4,801 — 4,950	198.00
4,951 — 5,100	204.00
5,101 — 5,250	210.00
5,251 — 5,400	216.00
5,401 — 5,550	222.00
5,551 — 5,700	228.00
5,701 — 5,850	234.00
5,851 — 6,000	240.00
6,001 — 6,150	246.00
6,151 — 6,300	252.00
6,301 — 6,450	258.00
6,451 — 6,600	264.00
6,601 — 6,750	270.00
6,751 — 6,900	276.00
6,901 and above	282.00

Assessed values shall be rounded to the next whole dollar (Fifty Cents (50¢) rounded to the next highest dollar) for the purposes of the above table.

One-half (½) of the exemption allowed in the above table shall be from taxes levied for school district purposes and one-half (½) shall be from taxes levied for county general fund purposes.

(2) Qualified homeowners described in subsection (2) of Section 27-33-67 shall be allowed an exemption from all ad valorem taxes on not in excess of Seven Thousand Dollars ($7,000.00) of the assessed value of the homestead property.

(3) This section shall only apply to exemptions claimed in the 1986 calendar year for which reimbursement is made in the 1987 calendar year.

SOURCES: Laws, 1984, ch. 453, § 4; Laws, 1987, ch. 372, § 1, eff from and after passage (approved March 19, 1987).

ATTORNEY GENERAL OPINIONS

A municipality must allow a taxpayer who is entitled to a homestead exemption under Section 27-33-67(2) an exemption from municipal ad valorem taxes in the maximum amount allowed pursuant to the tables in Sections 27-33-69, 27-33-71, 27-33-73, or 27-33-75; in other words, the taxpayer should be totally exempt from municipal ad valorem taxes up to the maximum amount allowed in the tables, not exempt up to the amount of the reimbursement to the municipality per homestead exemption applicant. Applewhite, July 14, 2000, A.G. Op. #2000-0203.

§ 27-33-73. Tax table for exemptions claimed in 1987 calendar year for which reimbursement is made in 1988 calendar year.

(1) Qualified homeowners described in subsection (1) of Section 27-33-67 shall be allowed an exemption from ad valorem taxes according to the following table:

ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
$ 1 — $ 150	$ 6.00
151 — 300	12.00
301 — 450	18.00
451 — 600	24.00
601 — 750	30.00
751 — 900	36.00
901 — 1,050	42.00
1,051 — 1,200	48.00
1,201 — 1,350	54.00
1,351 — 1,500	60.00
1,501 — 1,650	66.00
1,651 — 1,800	72.00
1,801 — 1,950	78.00
1,951 — 2,100	84.00
2,101 — 2,250	90.00
2,251 — 2,400	96.00
2,401 — 2,550	102.00
2,551 — 2,700	108.00

ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
2,701 — 2,850	114.00
2,851 — 3,000	120.00
3,001 — 3,150	126.00
3,151 — 3,300	132.00
3,301 — 3,450	138.00
3,451 — 3,600	144.00
3,601 — 3,750	150.00
3,751 — 3,900	156.00
3,901 — 4,050	162.00
4,051 — 4,200	168.00
4,201 — 4,350	174.00
4,351 — 4,500	180.00
4,501 — 4,650	186.00
4,651 — 4,800	192.00
4,801 — 4,950	198.00
4,951 — 5,100	204.00
5,101 — 5,250	210.00
5,251 — 5,400	216.00
5,401 — 5,550	222.00
5,551 — 5,700	228.00
5,701 — 5,850	234.00
5,851 — 6,000	240.00
6,001 — 6,150	246.00
6,151 — 6,300	252.00
6,301 and above	258.00

Assessed values shall be rounded to the next whole dollar (Fifty Cents (50¢) rounded to the next highest dollar) for the purposes of the above table.

One-half (½) of the exemption allowed in the above table shall be from taxes levied for school district purposes and one-half (½) shall be from taxes levied for county general fund purposes.

(2) Qualified homeowners described in subsection (2) of Section 27-33-67 shall be allowed an exemption from all ad valorem taxes on not in excess of Six Thousand Five Hundred Dollars ($6,500.00) of the assessed value of the homestead property.

(3) This section shall only apply to exemptions claimed in the 1987 calendar year for which reimbursement is made in the 1988 calendar year.

SOURCES: Laws, 1984, ch. 453, § 5; Laws, 1987, ch. 372, § 2, eff from and after passage (approved March 19, 1987).

ATTORNEY GENERAL OPINIONS

A municipality must allow a taxpayer who is entitled to a homestead exemption under Section 27-33-67(2) an exemption from municipal ad valorem taxes in the maximum amount allowed pursuant to the tables in Sections 27-33-69, 27-33-71, 27-33-73, or 27-33-75; in other words, the taxpayer should be totally exempt from municipal ad valorem taxes up to the maximum amount allowed in the tables, not exempt up to the amount of the reimbursement to the municipality per homestead exemption applicant. Applewhite, July 14, 2000, A.G. Op. #2000-0203.

§ 27-33-75. Tax table for exemptions claimed in 1988 calendar year for which reimbursement is made in 1989 calendar year, and to exemptions claimed for reimbursement in subsequent years.

[With regard to any county that has not completed an update in the valuation of Class I property, as designated by Section 112, Mississippi Constitution of 1890, in the county according to procedures prescribed by the State Tax Commission and in effect on January 1, 2001, and has not implemented such valuations for the purposes of ad valorem taxation, this section shall read as follows:]

(1) Qualified homeowners described in subsection (1) of Section 27-33-67 shall be allowed an exemption from ad valorem taxes according to the following table:

ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
$ 1 — $ 150	$ 6.00
151 — 300	12.00
301 — 450	18.00
451 — 600	24.00
601 — 750	30.00
751 — 900	36.00
901 — 1,050	42.00
1,051 — 1,200	48.00
1,201 — 1,350	54.00
1,351 — 1,500	60.00
1,501 — 1,650	66.00
1,651 — 1,800	72.00
1,801 — 1,950	78.00
1,951 — 2,100	84.00
2,101 — 2,250	90.00
2,251 — 2,400	96.00
2,401 — 2,550	102.00
2,551 — 2,700	108.00
2,701 — 2,850	114.00
2,851 — 3,000	120.00
3,001 — 3,150	126.00
3,151 — 3,300	132.00
3,301 — 3,450	138.00
3,451 — 3,600	144.00

ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
3,601 — 3,750	150.00
3,751 — 3,900	156.00
3,901 — 4,050	162.00
4,051 — 4,200	168.00
4,201 — 4,350	174.00
4,351 — 4,500	180.00
4,501 — 4,650	186.00
4,651 — 4,800	192.00
4,801 — 4,950	198.00
4,951 — 5,100	204.00
5,101 — 5,250	210.00
5,251 — 5,400	216.00
5,401 — 5,550	222.00
5,551 — 5,700	228.00
5,701 — 5,850	234.00
5,851 and above	240.00

Assessed values shall be rounded to the next whole dollar (Fifty Cents (50¢) rounded to the next highest dollar) for the purposes of the above table.

One-half (½) of the exemption allowed in the above table shall be from taxes levied for school district purposes and one-half (½) shall be from taxes levied for county general fund purposes.

(2) Qualified homeowners described in subsection (2) of Section 27-33-67 shall be allowed an exemption from all ad valorem taxes on not in excess of Six Thousand Dollars ($6,000.00) of the assessed value of the homestead property.

(3) This section shall apply to exemptions claimed in the 1988 calendar year for which reimbursement is made in the 1989 calendar year and to exemptions claimed for which reimbursement is made in subsequent years.

[With regard to any county that has completed an update in the valuation of Class I property, as designated by Section 112, Mississippi Constitution of 1890, in the county according to procedures prescribed by the State Tax Commission and in effect on January 1, 2001, and for which the State Tax Commission has certified that such new valuations have been implemented for the purposes of ad valorem taxation, this section shall read as follows:]

(1) Qualified homeowners described in subsection (1) of Section 27-33-67 shall be allowed an exemption from ad valorem taxes according to the following table:

ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
$ 1 — $150	$ 6.00
151 — 300	12.00
301 — 450	18.00

ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
451 — 600	24.00
601 — 750	30.00
751 — 900	36.00
901 — 1,050	42.00
1,051 — 1,200	48.00
1,201 — 1,350	54.00
1,351 — 1,500	60.00
1,501 — 1,650	66.00
1,651 — 1,800	72.00
1,801 — 1,950	78.00
1,951 — 2,100	84.00
2,101 — 2,250	90.00
2,251 — 2,400	96.00
2,401 — 2,550	102.00
2,551 — 2,700	108.00
2,701 — 2,850	114.00
2,851 — 3,000	120.00
3,001 — 3,150	126.00
3,151 — 3,300	132.00
3,301 — 3,450	138.00
3,451 — 3,600	144.00
3,601 — 3,750	150.00
3,751 — 3,900	156.00
3,901 — 4,050	162.00
4,051 — 4,200	168.00
4,201 — 4,350	174.00
4,351 — 4,500	180.00
4,501 — 4,650	186.00
4,651 — 4,800	192.00
4,801 — 4,950	198.00
4,951 — 5,100	204.00
5,101 — 5,250	210.00
5,251 — 5,400	216.00
5,401 — 5,550	222.00
5,551 — 5,700	228.00
5,701 — 5,850	234.00
5,851 — 6,000	240.00
6,001 — 6,150	246.00
6,151 — 6,300	252.00
6,301 — 6,450	258.00
6,451 — 6,600	264.00
6,601 — 6,750	270.00
6,751 — 6,900	276.00
6,901 — 7,050	282.00

ASSESSED VALUE OF HOMESTEAD	HOMESTEAD EXEMPTION
7,051 — 7,200	288.00
7,201 — 7,350	294.00
7,351 and above	300.00

Assessed values shall be rounded to the next whole dollar (Fifty Cents (50¢) rounded to the next highest dollar) for the purposes of the above table.

One-half (½) of the exemption allowed in the above table shall be from taxes levied for school district purposes and one-half (½) shall be from taxes levied for county general fund purposes.

(2)(a) Except as otherwise provided in this subsection, qualified homeowners described in subsection (2) of Section 27-33-67 shall be allowed an exemption from all ad valorem taxes on not in excess of Seven Thousand Five Hundred Dollars ($7,500.00) of the assessed value of the homestead property.

(b) From and after January 1, 2015, qualified homeowners described in subsection (2)(a) of Section 27-33-67 and unremarried surviving spouses of such homeowners shall be allowed an exemption from all ad valorem taxes on the assessed value of the homestead property.

(3) Except as otherwise provided in this subsection, this section shall apply to exemptions claimed in the 2001 calendar year for which reimbursement is made in the 2002 calendar year and to exemptions claimed for which reimbursement is made in subsequent years. The exemption provided for in subsection (2)(b) of this section shall apply to exemptions claimed in the 2015 calendar year for which reimbursement is made in the 2016 calendar year and to exemptions claimed for which reimbursement is made in subsequent years.

SOURCES: Laws, 1984, ch. 453, § 6; Laws, 1987, ch. 372, § 3; Laws, 2001, ch. 483, § 1; Laws, 2014, ch. 451, § 1, eff from and after Jan. 1, 2015.

Editor's Note — Laws of 2001, ch. 483, § 3, provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2014, ch. 451, § 3, effective January 1, 2015, provides:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — State tax commission as meaning the Department of Revenue, see § 27-3-4.

ATTORNEY GENERAL OPINIONS

A municipality must allow a taxpayer who is entitled to a homestead exemption under Section 27-33-67(2) an exemption from municipal ad valorem taxes in the maximum amount allowed pursuant to the tables in Sections 27-33-69, 27-33-71, 27-33-73, or 27-33-75; in other words, the taxpayer should be totally exempt from municipal ad valorem taxes up to the maximum amount allowed in the tables, not exempt up to the amount of the reimbursement to the municipality per homestead exemption applicant. Applewhite, July 14, 2000, A.G. Op. #2000-0203.

§ 27-33-77. Reimbursement of tax losses; limitations.

Beginning with the 1985 supplemental roll, and for each succeeding year's roll thereafter, the amount of tax loss to be reimbursed because of exemptions provided for in this article shall be Fifty Dollars ($50.00) each for county taxes exempted and school taxes exempted for a total of One Hundred Dollars ($100.00) per applicant qualifying for homestead exemption under this article.

The reimbursement received by the county shall be distributed by the county treasurer to the general fund.

Provided further, that tax losses sustained by municipalities because of exemptions granted to homeowners described in subsection (2) of Section 27-33-67 shall be reimbursed up to the amount of the actual exemption allowed, not to exceed Two Hundred Dollars ($200.00) per qualified applicant.

The reimbursement received by a county, municipality or school district may be pledged as security for a loan if the reimbursement to the county or school district is otherwise authorized or required by law to be pledged as security for such a loan.

SOURCES: Laws, 1984, ch. 453, § 7; Laws, 1987, ch. 372, § 4; Laws, 1994, ch. 570, § 19; Laws, 1995, ch. 521, § 4; Laws, 1995, ch. 563, § 21; Laws, 2005, 5th Ex Sess, ch. 12, § 4, eff from and after passage (approved Oct. 12, 2005.)

Editor's Note — Laws of 1995, ch. 521, which amended this section, also amended §§ 27-65-75 and 41-3-15 and enacted provisions classified as § 41-3-16. For full classification of this law, see Table B in Part 2 of the tables volume.

Cross References — Pledge of reimbursement for repayment of loan for freight rail service project, see § 57-44-7.

§ 27-33-79. Reimbursement of tax losses as affected by reduction of approved homestead applicants.

Notwithstanding the limitation imposed on reimbursement of tax losses in Section 27-33-77, no taxing unit shall be reimbursed more than one hundred six percent (106%) or less than the amount of the reimbursement made to the same taxing unit, for the next preceding year, unless such reimbursement is reduced as a result of a reduction in approved homestead applicants; however, for the 1986 calendar year, no taxing unit shall be reimbursed less than the amount of the reimbursement made to the same taxing unit for the 1985 calendar year.

SOURCES: Laws, 1984, ch. 453, § 8, eff from and after January 1, 1985.

ARTICLE 3.

HOMESTEAD EXEMPTIONS TO CERTAIN PERSONS INDUCTED INTO ARMED FORCES [REPEALED].

§§ 27-33-301 through 27-33-321. Repealed.

Repealed by Laws, 1978, ch. 433, § 1, eff from and after passage (approved March 27, 1978).

[Codes, 1942, § 9743.5-01 to 9743.5-11; Laws, 1946, ch. 197, §§ 1-11]

Editor's Note — Former §§ 27-33-301 through 27-33-321 pertained to the homestead exemptions for certain persons inducted into armed forces.

ARTICLE 5.

MUNICIPAL HOMESTEAD EXEMPTIONS [REPEALED].

§§ 27-33-501 through 27-33-509. Repealed.

Repealed by Laws, 1984, ch. 453, § 23, eff from and after January 1, 1985.
§ 27-33-501. [Codes, 1942, § 3701; Laws, 1938, Ex. ch. 19]
§ 27-33-503. [Codes, 1942, § 3702; Laws, 1938, Ex. ch. 19]
§ 27-33-505. [Codes, 1942, § 3737; Laws, 1938, Ex. ch. 19]
§ 27-33-507. [Codes, 1942, § 3739; Laws, 1938, Ex. ch. 19]
§ 27-33-509. [Codes, 1942, § 3741; Laws, 1938, Ex. ch. 19]

Editor's Note — Former § 27-33-501 provided for citation of the article.
Former § 27-33-503 provided for definitions.
Former § 27-33-505 provided for private charter municipalities; special provisions.
Former § 27-33-507 provided for construction of the article.
Former § 27-33-509 provided for application of the article.

CHAPTER 35

Ad Valorem Taxes—Assessment

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ARTICLE 1.

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§ 27-35-1. Tax lien; attachment; preferences.

(1) Taxes (state, county and municipal) assessed upon lands or personal property, excepting motor vehicles as defined by the Motor Vehicle Ad Valorem Tax Law of 1958, Sections 27-51-1 through 27-51-49, shall bind the same and, except for environmental covenants created pursuant to the Mississippi Uniform Environmental Covenants Act, shall be entitled to preference over all judgments, executions, encumbrances or liens whensoever created; and all such taxes assessed shall be a lien upon and bind the property assessed. Except as provided in subsection (3) of this section, the aforesaid tax lien shall attach to all land situated within this state on January 1 of each year, and upon any personal property so situated or brought into this state at any time prior to March 1 of each year except as hereinafter provided. A tax lien shall attach to that personal property listed in an ordinance duly adopted by a county or municipality and to all heavy duty equipment at any time of the year such property is brought into or situated in this state. Such personal property shall not be subject to tax in more than one (1) county; and such county in which said property was located at the earliest taxable date shall have priority in the collection of such taxes. All taxes assessed on stock of goods or merchandise shall be based on the value of the inventory on January 1 of the tax year or the average monthly inventory during the preceding twelve (12) months from January 1 of each year and are specifically made a lien thereon regardless of changes in the items of which it may be composed; and no such property shall be exempt from distress or sale for taxes. It shall not be necessary to the validity of any assessment or of a sale of land for taxes that it shall be assessed to its true owner, but the taxes shall be a charge upon the land or personal property taxed and the sale shall be a proceeding against the thing sold and shall vest title in the purchaser without regard to who may own the land or other property when assessed, or when sold, or whether wrongfully assessed either to a person or to the state or any county, city, town or village, or subdivision of either. Provided, however, that the lien for municipal taxes shall be secondary and subordinate to the lien for state and county taxes.

(2) Heavy duty equipment shall mean any motor vehicle used primarily off the road for construction purposes whose gross weight exceeds sixteen thousand (16,000) pounds but shall not include inventory on hand for sale by duly licensed heavy equipment dealers.

(3) With respect to lands owned by the state, which lands are leased to private agricultural enterprises and taxable under Section 47-5-66, the tax lien provided for in this section shall attach and be enforceable in the same manner as are other tax liens at the time the crop is harvested.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 9 (18); 1857, ch. 3, art. 12; 1871, § 1665; 1880, § 470; 1892, § 3746; 1906, § 4255; Hemingway's 1917, § 6886; 1930, § 3120; 1942, § 9744; Laws, 1884, p. 16; Laws, 1928, Ex. ch. 15; Laws, 1934, ch. 199; Laws, 1956, ch. 418, § 1; Laws, 1958, ch. 549, § 5; Laws, 1959 Ex. ch. 30; Laws, 1966, ch. 643, § 1; Laws, 1976, ch. 423, § 1; Laws, 1979, ch. 472; Laws, 1991, ch. 359, § 1; Laws, 1995, ch. 539, § 1; Laws, 1997, ch. 363, § 1; Laws, 2008, ch. 398, § 15, eff from and after July 1, 2008.

Cross References — Definition of term "personal property," see § 1-3-41.

Definition of term "property," see § 1-3-45.

Ad valorem tax on motor vehicles, see § 27-51-7.

Mississippi Uniform Environmental Covenants Act, see §§ 89-23-1 through 89-23-27.

JUDICIAL DECISIONS

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9. —Drainage or improvement assessments, effect of.

1. In general.

The statute operates to exempt from current ad valorem taxes on land a nonproducing mineral interest severed therefrom after taxes for the current year became a lien. Gray v. Steelman, 243 Miss. 294, 137 So. 2d 797 (1962).

The equipment of a corporate nonresident highway contractor has no tax situs in the state where not in the state on the first day of January in consequence of having been removed to the home state for repairs at a time when the job was shut down by bad weather. State v. Dixie Contractors, 240 Miss. 793, 129 So. 2d 386 (1961).

Where, on January 2, 1934, landowner executed option to federal government to sell land which was accepted by government on January 11, landowner held not relieved from its personal obligation to pay 1934 taxes, notwithstanding government received land free from tax lien. Gloster Lumber Co. v. Adams County, 173 Miss. 865, 163 So. 541 (1935).

No lien existed for the collection of privilege taxes before the seizure of the property of the person or corporation liable therefor. Henry v. Alexander, 131 Miss. 588, 94 So. 846 (1923).

Under former law taxes became a lien on property February 1st of the current year. Adams v. Lamb-Fish Lumber Co., 114 Miss. 534, 75 So. 378 (1917).

When a city purchases a lot subject to be assessed for back taxes, the lot becomes exempt from such taxes as property of the municipality. City of Laurel v. Weems, 100 Miss. 335, 56 So. 451 (1911).

Under such former law, by which taxes became a lien on property on February 1st, a contract made after that date to sell property freed from all liability required the vendor to pay the taxes of the current year. Vicksburg Waterworks Co. v. Vicksburg Water Supply Co., 80 Miss. 68, 31 So. 535 (1902).

To a proceeding to foreclose the lien for taxes arising under this section [Code 1942, § 9744], a railroad, having a majority of the stock and bonds and of the directors, is a necessary party. Yazoo & Miss. V. Ry. v. Adams, 77 Miss. 764, 25 So. 355 (1899).

2. Assessment, generally.

In an action by former landowners seeking to redeem property sold at a tax sale, the trial court improperly set aside the tax sale on the ground that the property was assessed to persons not the titleholders; under this section, property that is properly described may be legally assessed to an unknown person, or to any person though not the owner, since the assessment of ad valorem taxes is an in rem proceeding. Rains v. Teague, 377 So. 2d 924 (Miss. 1979).

Notwithstanding that defendants in an action involving title to a strip of land adjacent to land owned by them had acquired title thereto by continuous adverse possession for ten years, such title could be lost by assessment and sale for taxes; and, therefore, complainants should be permitted to prove a valid assessment and sale for taxes and acquisition by them of the tax title. Cotten v. Cotten, 203 Miss. 316, 35 So. 2d 61 (1948).

When a parcel of land has been assessed by a valid surface description, it includes every interest in the land so described, horizontal or otherwise and above or below the surface, although such interests be separately owned. Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

"Due process" requires that, to create lien, tax assessment must describe property with certainty or contain data clearly leading to identification. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

Bill offering to redeem land from state by payment of state and county taxes held demurrable, where complainant did not offer to pay drainage assessment thereon for nonpayment of which land had been sold to state. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

In quo warranto proceeding, in determining whether person holding office had paid taxes, assessment roll was only prima facie evidence of ownership of property assessed. State ex rel. Mitchell v. McDonald, 164 Miss. 405, 145 So. 508, 86 A.L.R. 290 (1933).

3. —Property owned by government.

Attempted assessment of property owned by municipality on January 1, 1937 for state and county taxes for 1937 is void for reason that property was exempt from taxation and sale for unpaid taxes on third Monday of September 1938 is void sale. Tardo v. Sterling, 205 Miss. 439, 38 So. 2d 911 (1949), error overruled 205 Miss. 439, 39 So. 2d 504.

4. —Unknown or incorrect owner.

By this section [Code 1942, § 9744], the assessment of land is a proceeding in rem, it being immaterial that the land is not assessed to be true owner. Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

Land which had been put on assessment roll, properly described as belonging to the United States, without any valuation, and which had been approved by the board, held not subject to back assessment on ground property had escaped taxation, irrespective of whether property belonged to a private landowner or federal government on January 1 of taxing year, since it is only where assessing authorities of county have failed to assess at all that state tax collector is authorized to act. Gully v. J.J. Newman Lumber Co., 178 Miss. 312, 172 So. 740 (1937).

Property properly described in tax assessment roll may be legally assessed to unknown person or to person other than owner. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

An assessment of personal property to an unknown owner is valid under this section [Code 1942, § 9744). Powell v. McKee, 81 Miss. 229, 32 So. 919 (1902).

5. Drainage or improvement assessments.

Levies for the costs of an uncompleted drainage district were a tax and not assessment levies and created preferential liens on mortgaged lands so as to bind the purchasers thereof on foreclosure. Bank of Commerce & Trust Co. v. Union Cent. Life Ins. Co., 94 F.2d 422 (5th Cir. 1938), cert. denied, 304 U.S. 570, 58 S. Ct. 1040, 82 L. Ed. 1535 (1938).

Drainage district assessments are charge only on lands against which they are assessed, and do not constitute debt against landowner which may be enforced by action. Nickey v. State, 167 Miss. 650, 145 So. 630 (1933), error overruled, 167 Miss. 684, 146 So. 859 (1933), motion overruled, 167 Miss. 689, 147 So. 324 (1933), aff'd, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

In suit by state against taxpayer to enforce taxes, including drainage assessments, against other lands of taxpayer, wherein taxpayer gave bond to discharge attachment, drainage assessments determined to be unenforceable against other lands of taxpayer held not enforceable under bond. Nickey v. State, 167 Miss. 650, 145 So. 630 (1933), error overruled, 167 Miss. 684, 146 So. 859 (1933), motion overruled, 167 Miss. 689, 147 So. 324 (1933), aff'd, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

6. Priorities.

With respect to competing claims on the debtor's mobile home, the county's ad valorem tax liens had priority over a secured claim because, under Mississippi law, the mobile home did not qualify as a motor vehicle that would be exempt from Miss. Code Ann. § 27-35-1 given that the definition of motor vehicle at Miss. Code Ann. § 27-51-5 expressly excludes mobile homes, which are separately defined at Miss. Code Ann. § 27-53-1. In re Riley, 550 B.R. 728 (Bankr. N.D. Miss. 2016).

Statutory tax lien was a secured claim against bankruptcy debtors' mobile home which was not avoidable by the bankruptcy trustee since the lien became effective prior to the debtors' bankruptcy and was enforceable against subsequent purchasers. In re Williams, — Bankr. —, 2010 Bankr. LEXIS 6560 (Bankr. N.D. Miss. Aug. 20, 2010).

Liens for state and local taxes antedating federal tax lien are entitled to priority of payment out of bankrupt's assets, though not made the basis of attachment or levy prior to bankruptcy. United States ex rel. IRS v. Bradley, 321 F.2d 224 (5th Cir. 1963).

Where the federal government's claim on land for taxes had been perfected prior to the time the city's ad valorem property tax claim on the land had accrued, the federal government's claim was entitled to priority in a bankruptcy proceeding. In re Mills Co., 148 F. Supp. 33 (S.D. Miss. 1957).

Mortgagee who paid delinquent taxes and redeemed mortgaged property from tax sale held subrogated to lien of state for taxes as against remaindermen though mortgagor at time of giving deed of trust had only life estate in property. Federal Land Bank v. Newsom, 175 Miss. 134, 166 So. 346 (1936).

7. Sale for taxes.

Under provision of this section [Code 1942, § 9744] that it shall not be necessary to validity of assessment of sale of land for taxes that it be assessed to true owner, advertisement of sale of land which erroneously gives initials of owner as "K. L." instead of "R. L." does not invalidate tax sale. Wilkinson v. Steele, 207 Miss. 701, 43 So. 2d 110 (1949).

Sale of lands to the state for taxes carries with it the minerals therein notwithstanding that the minerals were owned by third persons and should have been separately assessed. Pettis v. Brown, 203 Miss. 292, 33 So. 2d 809 (1948).

The power to seize and sell tax delinquent property does not necessarily have relation to the lien created on the property, which would be considered only when a lienor's rights were affected; and where the tax collector fails to offer the property for sale in the manner provided by statute (Code 1930, § 3249, now repealed), the sale is void. Cox v. Richerson, 186 Miss. 576, 191 So. 99, 124 A.L.R. 1138 (1939).

8. Title of purchaser.

Where the record title holder's true address was never on the quitclaim deed because the record title holder's cousin purchased the property in the record title holder's name and the record title holder intentionally gave the record title holder's daughter's address instead of the record title holder's own address; the tax sale was valid in spite of the failure of the clerk to send notice of the tax sale to the record title holder's address, the tax deed properly vested title in the purchaser at the tax sale, the purchaser's subsequent quitclaim deed to the buyers was valid, all clouds upon the title to the property were removed and canceled, and the title to the property was properly vested in the buyers. Rush v. Wallace Rentals, LLC, 837 So. 2d 191 (Miss. 2003).

Even if a tax deed had been defective or void for failure to advertise the tax sale or to give the landowner notice as to redemption, it would still have operated as color of title and formed a sufficient basis upon which adverse possession could ripen into title, and since defendants had admittedly deprived the complainant of possession of the land for considerably more than ten years prior to the complainant's action for confirmation of his title, the complainant could not prevail. Trotter v. Roper, 229 Miss. 784, 92 So. 2d 230 (1957).

Where a life tenant has failed to pay the taxes but instead purchased the land at the tax sale, the life tenant thereby only acquired the previous title to a life estate. Tillman v. Richton Tie & Timber Co., 224 Miss. 789, 80 So. 2d 745 (1955).

Tax purchaser is not innocent purchaser for value, but takes title subject to all infirmities. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Tax sale purporting to convey entire property does not convey to tax purchaser minerals in the land separately owned and separately assessed by tax collector, where the tax roll in hands of collector showed the separate assessment, and the roll, as well as copies of tax receipts, disclosed fact that taxes on minerals for two years before sale had actually been paid. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Statute providing that sale of land for taxes conveys perfect title to purchaser held to convey title in fee simple except in so far as title is qualified by other provisions creating lien. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

9. —Drainage or improvement assessments, effect of.

A purchaser under a special improvements sale acquired superior rights to one purchasing under a municipal ad valorem tax sale. Shelton v. Reliance Inv. Co., 230 Miss. 51, 92 So. 2d 329 (1957).

Where property previously sold for municipal ad valorem taxes was also sold for special improvement taxes to another person, the special improvements tax purchaser acquired complete title upon the failure of the municipal ad valorem tax purchaser to redeem within two years from the date of sale. Shelton v. Reliance Inv. Co., 230 Miss. 51, 92 So. 2d 329 (1957).

Statutory construction that purchaser of land on sale for state and county taxes does not receive land free from lien of drainage assessments held not unconstitutional as releasing, postponing, or diminishing taxes. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

Purchaser of land at tax sale does not receive land free from lien of drainage assessments thereon. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

ATTORNEY GENERAL OPINIONS

Neither the county board of supervisors nor the tax collector had any authority to compromise a tax claim where the actions of a county tax collector with regard to the assessment of personal property taxes were authorized, and there was no dispute over valuation or assessment. Aycock, August 27, 1999, A.G. Op. #99-0444.

Liability for ad valorem taxes attaches as of January 1 of a tax year and, therefore, land acquired by a church for religious purposes after a lien for taxes of the then current year is acquired by the church is subject to, and not exempt from, the tax lien. Andrews, Dec. 17, 1999, A.G. Op. #99-0682.

Board of supervisors may not compromise a disputed tax claim by demanding any amount less than the full amount of taxes due; however, upon payment as ordered by the bankruptcy court, the lien for any remaining unpaid taxes may be discharged. Trapp, Nov. 15, 2002, A.G. Op. #02-0622.

There is no authority for a county board of supervisors to forgive or reduce the amount of ad valorem taxes, penalties and interest due on property. O'Donnell, Feb. 7, 2003, A.G. Op. #03-0053.

RESEARCH REFERENCES

ALR. Property owner's liability for unpaid taxes following acquisition of property by another at tax sale. 100 A.L.R.3d 593.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 798 et seq.

CJS. 85 C.J.S., Taxation §§ 960-962 et seq.

Law Reviews. The Effect of Bankruptcy and Encumbrances on Mineral Interests in Mississippi. 53 Miss. L. J. 551, December, 1983.

§ 27-35-3. Date establishing liability to taxation.

All taxable real property situated in the state acquired or held by any person before January 1 of each year, and all other taxable property so situated or brought into this state at any time prior to March 1 of each year, shall be assessed and taxes thereon paid for the ensuing year with the exception of heavy duty equipment as defined in Section 27-35-1(2). Heavy duty equipment shall be assessed and taxes thereon paid at any time such equipment is acquired or brought into this state for use as construction equipment, and such assessment shall be prorated with respect to the number of months remaining in the year. Such other property shall not be assessed by more than one (1) county, and such county in which said property was located at the earliest taxable date in any year shall have priority in the assessment of such taxes.

Provided, however, that when a municipality is created or the corporate limits thereof extended after January 1 of any year it shall have, prior to July 1 of said year, the full right and power to assess said property and collect taxes for the current year to the same extent as if it had been created or limits extended prior to January 1 of that year.

Nothing in this section shall be construed to limit the power of the state to define and declare the situs of particular species of property having no fixed situs at some place in this state.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art 17(3); 1857, ch. 3, art. 13; 1871, § 1666; 1880, § 471; 1892, § 3748; 1906, § 4257; Hemingway's 1917, § 6888; 1930, § 3121; 1942, § 9745; Laws, 1920, ch. 310; Laws, 1928, Ex. ch. 15; Laws, 1966, ch. 643, § 2; Laws, 1976, ch. 423, § 2, eff from and after July 1, 1976.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.
2. Property subject to taxation.
3.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. In general.
12. Property subject to taxation.

I. UNDER CURRENT LAW.

1. In general.

Landowner executing option to federal government, Jan. 2, 1934, which was accepted by government Jan. 11, held not relieved of personal obligation to pay 1934 taxes. Gloster Lumber Co. v. Adams County, 173 Miss. 865, 163 So. 541 (1935).

2. Property subject to taxation.

The franchise of a waterworks company in a city is subject to taxation as personal property. Adams v. Samuel R. Bullock & Co., 94 Miss. 27, 47 So. 527, 19 Am. Ann. Cas. 165 (1908).

Personal property which has a situs distinct from the person of the owner is liable for assessment for taxes where it is located and not at the place of the owner's residence. Colbert v. Leake County Supvrs., 60 Miss. 142 (1882).

3.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. In general.

Under the former law taxes became a lien on the property February first of the current year. Adams v. Lamb-Fish Lumber Co., 114 Miss. 534, 75 So. 378 (1917).

12. Property subject to taxation.

Under such old law all taxable property brought into the state or held or acquired by any person before February first should be assessed and taxes paid thereon for the current year. Barnes v. Jones, 139 Miss. 675, 103 So. 773, 43 A.L.R. 673 (1925).

Under the former statute lands purchased from the state between February 1st and October 1st were not liable to taxation for that year. Wildberger v. Shaw, 84 Miss. 442, 36 So. 539 (1904); Creegan v. Hyman, 93 Miss. 481, 46 So. 952 (1908).

Under such former statute property, other than merchandise, brought into the state after February 1st of any year was not taxable for that year, but by virtue of another law (ch 38, Laws 1896), stocks of merchandise so brought into the state were made liable for a proportionate part of the current year's taxes. Jennings v. Board of Supvrs., 79 Miss. 523, 31 So. 107 (1902).

ATTORNEY GENERAL OPINIONS

Section 27-35-3 does not require governing authorities to assess and collect taxes on property annexed by court order before July 1, but gives governing authorities the discretion to assess and collect taxes on the annexed area for the current year or to assess and collect taxes on the annexed area beginning on January 1 of the next year. Gowan, November 22, 1995, A.G. Op. #95-0700.

Under Section 27-35-3, the 1995 taxes are to be assessed to, and owed by the owner of the property as of January 1 of each year. If a sale of property takes place at any time thereafter, it is a matter between the buyer and seller of the property to determine how the payment or reimbursement of the taxes shall be handled. Greco, March 8, 1996, A.G. Op. #96-0097.

There is no provision for taxes being reimbursable pro rata for fractional parts of a tax year after the property is acquired by a charitable or benevolent organization. Hollimon, Dec. 6, 2002, A.G. Op. #02-0677.

Provided that no appeal is made, and provided that there is a determination of no objection by the United States Attorney General, annexation is deemed final and effective on the date of the final judgment approving the annexation and the municipality may assess and collect taxes for the current year on property located in the annexed area. Rafferty, Nov. 27, 2006, A.G. Op. 06-0598, , 2006 Miss. AG LEXIS 428, modified by Mallette, March 2, 2007, A.G. Op. #07-00096, 2007 Miss. AG LEXIS 72, as to the effective date of annexation for all purposes other than voting and candidacy.

An annexation is final and effective for all purposes 10 days after issuance of the decree by the chancery court, or 10 days after final determination of an appeal, except that citizens residing in an annexed area may not participate in future municipal elections as electors or as candidates, unless and until pre-clearance by the U.S. Department of Justice is obtained pursuant to Section 5 of the Voting Rights Act. Mallette, March 2, 2007, A.G. Op. #07-00096, 2007 Miss. AG LEXIS 72, modifying Rafferty, November 27, 2006, A.G. Op. #06-00598, 2006 Miss. AG LEXIS 428, as to the effective date of annexation for all purposes other than voting and candidacy.

§ 27-35-4. Rates of assessment.

(1) All Class I property, as defined in Section 112, Mississippi Constitution of 1890, shall be assessed at the rate of ten percent (10%) of true value.

(2) All Class II property and Class III property, as defined in Section 112, Mississippi Constitution of 1890, shall be assessed at the rate of fifteen percent (15%) of true value.

(3) All Class IV property and Class V property, as defined in Section 112, Mississippi Constitution of 1890, shall be assessed at the rate of thirty percent (30%) of true value.

SOURCES: Laws, 1984, ch. 355, § 1; Laws, 1986, ch. 447, eff from and after June 19, 1986 [See Editor's Note below].

Editor's Note — Chapter 478, Laws of 1986, provided that the amendment to Section 27-35-4 was to become effective from and after ratification by the electorate of House Concurrent Resolution No. 41 (Chapter 522, Laws of 1986), which proposed to amend Section 112 of the Constitution of the State of Mississippi. The electorate ratified the amendment on June 3, 1986, and, by proclamation of the Secretary of State of the State of Mississippi, the amendment was inserted in the Constitution.

JUDICIAL DECISIONS

1. In general.

Mississippi, as the domiciliary state, had the right as such to levy an ad valorem property tax against leased trucks, notwithstanding that the trucks were engaged in interstate activity. Thomas Truck Lease, Inc. v. Lee County, 768 So. 2d 870 (Miss. 1999).

Under the "current use" requirement for determining the true value of property for ad valorem taxation purposes, the concept of the "highest and best use" of the land is not applicable. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 (Miss. 1989).

RESEARCH REFERENCES

ALR. Validity, construction, and effect of state statutes affording preferential property tax treatment to land used for agriculture purposes. 98 A.L.R.3d 916.

Situs of tangible personal property for purposes of property taxation. 2 A.L.R.4th 432.

Recovery of tax paid on exempt property. 25 A.L.R.4th 186.

What constitutes church, religious society, or institution exempt from property tax under state constitutional or statutory provisions. 28 A.L.R.4th 344.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 119, 122.

72 Am. Jur. 2d, State and Local Taxation § 629 et seq.

CJS. 84 C.J.S., Taxation §§ 464, 530-598.

§ 27-35-5. Taxes, increases, penalties and interest recoverable by action.

Every lawful tax including all increases, penalties and interest which may be or become owing or assessed, levied or imposed by the state or by a county, municipality or levee board, whether ad valorem (including all school district taxes), privilege, excise, income or inheritance, is a debt due by the person or corporation owning the property or carrying on the business or profession upon which the tax is levied or imposed, whether properly assessed or not, or by the person liable for the income, inheritance or excise tax, and may be recovered by action by any officer authorized to sue for or collect same. Said increases, interest and penalties shall be recoverable as a part of the tax with respect to which they are imposed. The recovery of a personal judgment for taxes on land or personal property against the owner shall not extinguish the tax lien. In all actions for the recovery of ad valorem taxes the assessment roll shall be only prima facie correct.

SOURCES: Codes, 1892, § 3747; 1906, § 4256; Hemingway's 1917, § 6887; 1930, § 3122; 1942, § 9746; Laws, 1946, ch. 459, § 1; Laws, 1954, ch. 375; Laws, 1956, ch. 418, § 2.

Cross References — Constitutional provision for assessment of taxes, see Miss. Const. Art. 4, § 112.

JUDICIAL DECISIONS

1. In general.
2. Construction and application, in general.
3. — Extinguishment of personal liability.
4. —New liability created.
5. Assessment roll only prima facie correct.
6. Particular taxes.
7. —Income taxes.
8. —Inheritance taxes.
9. —Drainage or improvement assessments.
10. Nonresident taxpayer.
11. Death of owner of property.

1. In general.

The statute does not offend the due process clause of the 14th Amendment, even as applied to a nonresident. Nickey v. Mississippi, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

This provision cannot constitutionally be applied although the tax is assessed without notice, service of process, or opportunity to be heard, where the statute makes the assessment rolls only prima facie correct and the state supreme court has ruled that it is open to the defendant in any suit to collect the tax to assail the correctness and validity thereof, and that the court proceeding, and not the assessment, fixes the liability to pay the tax. Nickey v. Mississippi, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

Statute making every tax lawfully levied a debt against taxpayer and authorizing recovery thereof by action held not invalid as denying due process of law. George County Bridge Co. v. Catlett, 161 Miss. 120, 135 So. 217 (1931).

2. Construction and application, in general.

Decree canceling tax sale and directing personal judgment against owner of land sold is void and of no effect when rendered on bill alleging no fact showing tax sale invalid but alleging in effect valid tax sale, which operated as extinguishment of personal liability of owner. State v. Rogers, 206 Miss. 643, 39 So. 2d 533 (1949).

No action lies under this section [Code 1942, § 9746], for recovery from taxpayer of unlawful tax attempted to be imposed by state tax collector. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

State tax collector is purely collector, authorized only to collect taxes already assessed and delinquent, and having no authority to create delinquency for which he may sue. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

In view of the circumstances that no personal liability existed at common law on the part of the owner for unpaid taxes against his property, that this section [Code 1942, § 9746] creates a new liability and a new remedy, and creates a means by which the property of the owner, other than the property against which the levy is made, may be seized and sold, the statute should be construed favorably to the taxpayer. Vanzandt v. Town of Braxton, 194 Miss. 863, 14 So. 2d 222 (1943).

An action to enforce payment of taxes assessed by a state and its governmental subdivisions against national bank stock, which defendant, on taking over the assets of the bank upon insolvency, has covenanted to pay, is not removable from a state to a federal court as one arising under a law of the United States by reason of the fact that such stock may be taxed by the state only as permitted by federal legislation. Gully v. First Nat'l Bank, 299 U.S. 109, 57 S. Ct. 96, 81 L. Ed. 70 (1936).

Where, on January 2, 1934, landowner executed option to federal government to sell land which was accepted by government on January 11, landowner held not relieved from its personal obligation to pay 1934 taxes, notwithstanding government received land free from tax lien. Gloster Lumber Co. v. Adams County, 173 Miss. 865, 163 So. 541 (1935).

Property properly described in tax assessment roll may be legally assessed to unknown person or to person other than owner. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

"Due process" requires that, to create lien, tax assessment must describe property with certainty or contain data clearly leading to identification. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

Taxes may be collected by judicial process when authorized by legislature. Nickey v. State, 167 Miss. 650, 145 So. 630 (1933), error overruled, 167 Miss. 684, 146 So. 859 (1933), motion overruled, 167 Miss. 689, 147 So. 324 (1933), aff'd, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

Proceedings by tax collector of county, exhausting statutory remedies provided for collection of taxes, held not condition precedent to action by state to collect taxes as debt against taxpayer. Nickey v. State, 167 Miss. 650, 145 So. 630 (1933), error overruled, 167 Miss. 684, 146 So. 859 (1933), motion overruled, 167 Miss. 689, 147 So. 324 (1933), aff'd, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

State, in action against taxpayer for collection of taxes as debt, held not entitled to recover costs of advertising lands by tax collector and tax collector's statutory damages, where statutory proceedings were abandoned in favor of action by State. Nickey v. State, 167 Miss. 650, 145 So. 630 (1933), error overruled, 167 Miss. 684, 146 So. 859 (1933), motion overruled, 167 Miss. 689, 147 So. 324 (1933), aff'd, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

Objection that sheriff and tax collector of county was within authority to maintain action cannot be raised for first time on appeal. George County Bridge Co. v. Catlett, 161 Miss. 120, 135 So. 217 (1931).

Where land was sold to state for taxes, county could not sue alone for taxes due it. Carrier Lumber & Mfg. Co. v. Quitman County, 156 Miss. 396, 124 So. 437, 66 A.L.R. 614 (1929), error overruled, 156 Miss. 406, 125 So. 416, 66 A.L.R. 619 (1930).

This section [Code 1942, § 9746] does not confine the remedy to courts of law. Delta & Pine Land Co. v. Adams, 93 Miss. 340, 48 So. 190 (1908).

An assessment of personal property to an unknown owner is valid. Powell v. McKee, 81 Miss. 229, 32 So. 919 (1902).

3. — Extinguishment of personal liability.

Valid tax sale of land operates as extinguishment of personal liability of owner and leaves land only as debtor for its taxes. State v. Rogers, 206 Miss. 643, 39 So. 2d 533 (1949).

4. —New liability created.

This section [Code 1942, § 9746] has no retroactive effect, but it does create a new obligation to pay as well as a new remedy, and a personal judgment can be taken. Delta & Pine Land Co. v. Adams, 93 Miss. 340, 48 So. 190 (1908).

5. Assessment roll only prima facie correct.

Burden of proof to overturn the assessment by a preponderance of the evidence is upon the taxpayer. McArdle's Estate v. City of Jackson, 215 Miss. 571, 61 So. 2d 400 (1952).

The provision of this statute [Code 1942, § 9746] that "in all actions for the recovery of ad valorem taxes the assessment roll shall only be prima facie correct," should not apply to a proceeding by a taxpayer to enjoin the sale of land for delinquent taxes. South Miss. Land Co. v. Allen, 185 Miss. 555, 187 So. 758 (1939).

In quo warranto proceeding, in determining whether person holding office had paid taxes, assessment roll was only prima facie evidence of ownership of property assessed. State ex rel. Mitchell v. McDonald, 164 Miss. 405, 145 So. 508, 86 A.L.R. 290 (1933).

In action for recovery of ad valorem taxes, assessment roll is only prima facie correct. George County Bridge Co. v. Catlett, 161 Miss. 120, 135 So. 217 (1931).

6. Particular taxes.

This section [Code 1942, § 9746] applies to the municipal privilege tax. General Contract Corp. v. Bailey, 218 Miss. 484, 67 So. 2d 485 (1953).

Where successor corporation agreed to assume the liabilities and obligations of the predecessor corporation which were due from the state, the successor corporation was liable for municipal privilege taxes in view of the statute providing for withdrawal of foreign corporation from the state and also in view of statute providing that a tax as a debt due by corporation may be recovered by action. General Contract Corp. v. Bailey, 218 Miss. 484, 67 So. 2d 485 (1953).

Assessment of property by a separate and independent governmental subdivision such as a county, would not be of any probative worth upon the true market value in an action attacking validity of city tax assessment. McArdle's Estate v. City of Jackson, 215 Miss. 571, 61 So. 2d 400 (1952).

In an action attacking the validity of city tax assessment where offer approved did not show percentage basis of true and market value upon which the county assessed property, exclusion of assessment of the same property by the county was not error. McArdle's Estate v. City of Jackson, 215 Miss. 571, 61 So. 2d 400 (1952).

Particular, specific, and special provisions of "Local Privilege Tax Law of 1944" supplant generic powers granted state tax collector by Code 1942, § 9179, because they have been expressly and exclusively conferred on municipal tax authorities in relation to matter of municipal privilege taxes. Bailey v. Emmich Bros., 204 Miss. 666, 37 So. 2d 797 (1948).

The application of this section [Code 1942, § 9746] to taxes levied or imposed by municipalities refers to taxes for municipal purposes but not to taxes levied or collected by a municipality for the benefit of a separate school district. Vanzandt v. Town of Braxton, 194 Miss. 863, 14 So. 2d 222 (1943).

No personal liability is imposed by this section [Code 1942, § 9746] for separate school district taxes, either by express words or necessary implication. Vanzandt v. Town of Braxton, 194 Miss. 863, 14 So. 2d 222 (1943).

7. —Income taxes.

The fact that a gross income tax was made a debt recoverable by action under the terms of the statute by which it was imposed was not of itself determinative of the right of the state tax collector to sue therefor. Dunn Constr. Co. v. Craig, 191 Miss. 682, 2 So. 2d 166 (1941), error overruled, 191 Miss. 715, 3 So. 2d 834 (1941).

8. —Inheritance taxes.

This section [Code 1942, § 9746] does not apply to an inheritance tax. Enochs v. State, 128 Miss. 361, 91 So. 20 (1922).

9. —Drainage or improvement assessments.

Levies for the costs of an uncompleted drainage district were a tax and not assessment levies and created preferential liens on mortgaged lands so as to bind the purchasers thereof on foreclosure. Bank of Commerce & Trust Co. v. Union Cent. Life Ins. Co., 94 F.2d 422 (5th Cir. 1938), cert. denied, 304 U.S. 570, 58 S. Ct. 1040, 82 L. Ed. 1535 (1938).

Drainage district's assessments are charge only on lands against which they are assessed, and do not constitute debt against landowner which may be enforced by action. Nickey v. State, 167 Miss. 650, 145 So. 630 (1933), error overruled, 167

Miss. 684, 146 So. 859 (1933), motion overruled, 167 Miss. 689, 147 So. 324 (1933), aff'd, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

In suit by state against taxpayer to enforce taxes, including drainage assessments, against other lands of taxpayer, wherein taxpayer gave bond to discharge attachment, drainage assessments determined to be unenforceable against other lands of taxpayer held not enforceable under bond. Nickey v. State, 167 Miss. 650, 145 So. 630 (1933), error overruled, 167 Miss. 684, 146 So. 859 (1933), motion overruled, 167 Miss. 689, 147 So. 324 (1933), aff'd, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

County board of supervisors under 1924 statute held required to pay drainage assessments levied after enactment of statute on any sixteenth section land not leased but included within drainage district. Washington County v. Riverside Drainage Dist., 159 Miss. 102, 131 So. 644 (1931).

10. Nonresident taxpayer.

Where nonresident defendants appeared in state's action for collection of taxes as debt, and submitted to jurisdiction, and had opportunity for hearing, requirements of due process were met. Nickey v. Mississippi, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

Personal liability against nonresident for taxes meets due-process requirements if, before obligated to pay tax, nonresident has been given appropriate notice and opportunity to contest tax. Nickey v. State, 167 Miss. 650, 145 So. 630 (1933), error overruled, 167 Miss. 684, 146 So. 859 (1933), motion overruled, 167 Miss. 689, 147 So. 324 (1933), aff'd, 292 U.S. 393, 54 S. Ct. 743, 78 L. Ed. 1323 (1934).

11. Death of owner of property.

Where the testatrix provided for the payment by her executors of all her just and legal debts, taxes on real estate accruing and due for the year prior to her death, were to be paid by her executors and were not chargeable against the devisee of such real estate devised to him subject to one-half of the mortgage debt thereon. Eatherly v. Winn, 185 Miss. 742, 189 So. 99 (1939).

Decision of umpire designated by will to settle disputes between executors, determining that taxes on real estate devised subject to the mortgage debt thereon were not payable by the estate but by the devisee, was not binding on the devisee, where the provision for action by such umpire was designed to bring about harmony between the executors, and such decision was contrary to the manifest intention of the testatrix. Eatherly v. Winn, 185 Miss. 742, 189 So. 99 (1939).

ATTORNEY GENERAL OPINIONS

Ad valorem tax lien against property is extinguished if a public body acquires the property, but the personal liability of the owner is not relieved. Griffith, May 13, 1992, A.G. Op. #92-0319.

Miss. Code Section 27-35-5 authorizes suit to be filed to recover debt created by nonpayment of taxes; once judgment is obtained, property may then be seized via execution on judgment. Sanders, Mar. 4, 1993, A.G. Op. #93-0100.

Miss. Code Section 27-35-5 imposes personal liability for ad valorem taxes on owner of property as of January 1 lien date but ad valorem tax lien against property is extinguished if public body acquires property; however, state agency which is authorized to purchase or acquire real estate may as part of consideration for purchase of parcel of property agree to pay current year's taxes encumbering property. Hilliard, Jan. 21, 1994, A.G. Op. #93-0998.

When the tax rolls contain the name of an owner which is a corporation, the statute imposes no personal liability for the taxes upon a shareholder or stockholder of the corporation. Andrzejewski, August 21, 1998, A.G. Op. #98-0495.

RESEARCH REFERENCES

ALR. Propriety of class action in state courts to recover taxes. 10 A.L.R.4th 655.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 780.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 171 et seq. (enforcement of tax liability generally); Forms 191 et seq. (enforcement of tax liens).

CJS. 85 C.J.S., Taxation § 1174 et seq.

§ 27-35-7. Where persons and property assessed.

Real property shall be assessed in the county, municipality and district where situated; and all tangible personal property shall be assessed in the county, municipality or district in which the same may be on the day the said tax lien takes effect, and the list thereof may be rendered by an agent of the owner. Provided, that where tangible personal property is temporarily removed from the taxing jurisdiction before the day on which the tax lien takes effect, said tax lien shall take effect in such jurisdiction as though said property were not removed.

All property subject to taxation not above-mentioned shall be assessed in the county, municipality and district where the owner resides.

Provided, however, that all persons, firms and corporations doing contracting work for drainage districts, for road districts, levee districts, bridge building or any other kind of contracting work, shall have all their personal property used in carrying out such contracts assessed in the county and district where such property is being used on the first day of January of each year.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 16 (6); 1857, ch. 3, art. 14; 1871, § 1667; 1880, § 472; 1892, § 3749; 1906, § 4258; Hemingway's 1917, § 6891; 1930, § 3123; 1942, § 9747; Laws, 1956, ch. 418, § 3.

Cross References — Constitutional provision for assessment of taxes, see Miss. Const. Art. 4, § 112.

JUDICIAL DECISIONS

1. In general.
2. Particular applications.

1. In general.

This section [Code 1942, § 9747] serves only to determine in which county of the various counties and districts in Mississippi property will be taxable and in no manner does this section [Code 1942, § 9747] determine the actual tax liability. Anderson Bros. Corp. v. Board of Supvrs., 221 Miss. 361, 73 So. 2d 105 (1954), appeal dismissed, 348 U.S. 923, 75 S. Ct. 341, 99 L. Ed. 724 (1955).

Under this section [Code 1942, § 9747], providing that every person shall be assessed in the municipality in which he resides at the time of the assessment, the assessment is to be made where the person actually resides at the time, though he has a residence at another place and votes there. Millsaps v. City of Jackson, 88 Miss. 504, 42 So. 234 (1906).

2. Particular applications.

The equipment of a corporate nonresident highway contractor has no tax situs in the state where not in the state on the first day of January in consequence of having been removed to the home state for repairs at a time when the job was shut down by bad weather. State v. Dixie Contractors, 240 Miss. 793, 129 So. 2d 386 (1961).

This section [Code 1942, § 9747] does not exempt from the personal property tax machinery and equipment of a foreign corporation engaged in laying pipelines for transmission of natural gas which was stored in the state for three months prior to the tax day and which was in the state on the tax day. Anderson Bros. Corp. v. Board of Supvrs., 221 Miss. 361, 73 So. 2d 105 (1954), appeal dismissed, 348 U.S. 923, 75 S. Ct. 341, 99 L. Ed. 724 (1955).

Assessment of gasoline steam shovel under description of "machinery, tools, implements and equipment," held valid. Byers Mach. Co. v. Cobb Bros. Constr. Co., 182 Miss. 212, 179 So. 565 (1938).

By a divided court it was held that a domestic corporation is not liable for taxes on the portion of its capital invested in shares of another domestic corporation. Robertson v. Mississippi Valley Co., 120 Miss. 159, 81 So. 799 (1919).

Personal property in the hands of a trustee is assessable at his residence or domicile. Board of Supvrs. v. Dale, 110 Miss. 671, 70 So. 828 (1916).

RESEARCH REFERENCES

ALR. Domicil for state tax purposes of wife living apart from husband. 82 A.L.R.3d 1274.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 573 et seq.

CJS. 84 C.J.S., Taxation § 553.

§ 27-35-9. Where banks and other companies assessed.

All banks and other companies and corporations shall be assessed in the county in which the principal office or place of transacting business is situated; and if there shall be no such principal office or place of business, then in the county or counties in which the business of the bank, company or corporation shall be carried on.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 17 (7); 1857, ch. 3, art. 15; 1871, § 1668; 1880, § 473; 1892, § 3750; 1906, § 4259; Hemingway's 1917, § 6892; 1930, § 3124; 1942, § 9748.

Cross References — Constitutional provisions for taxation of corporations, see Miss. Const. Art. 7, §§ 181, 182.

Assessment of corporations and joint stock companies, see § 27-35-31.

Taxation of banks, see §§ 27-35-35 through 27-35-39.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 186 et seq., 375, 376.

4 Am. Jur. Proof of Facts, Doing Business, Proof No. 1 (doing business).

CJS. 84 C.J.S., Taxation § 443 et seq.

§ 27-35-11. Banks; how lands of bank taxed.

The real estate of a bank or banking association shall be assessed and pay taxes-state, county, district and municipal-according to its value, as other real estate.

SOURCES: Codes, 1892, § 3766; 1906, § 4275; Hemingway's 1917, § 6906; 1930, § 3125; 1942, § 9749.

Cross References — Taxation of personal property of banks, see § 27-35-12.

Taxation of banks, see §§ 27-35-35 through 27-35-39.

Assessments of lands, generally, see § 27-35-49.

JUDICIAL DECISIONS

1. In general.

True value of bank real estate must be deducted from aggregate true value of assets in determining true value of capital stock for taxation. Bank of Tupelo v. Board of Supvrs., 155 Miss. 436, 124 So. 482 (1929).

Part of bank's capital, surplus, and undivided profits invested in land is assessed as other land. Merchants' & Farmers' Bank v. City of Kosciusko, 149 Miss. 835, 116 So. 88 (1928).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 375.

CJS. 84 C.J.S., Taxation §§ 641-644.

§ 27-35-12. Banks; personal property of banks taxed.

The personal property of a bank or banking association shall be assessed and shall be liable for county, district and municipal ad valorem taxes, and every bank shall pay such ad valorem taxes at the time and in the manner provided by law.

SOURCES: Laws, 1978, ch. 410, § 6, eff from and after January 1, 1979.

Cross References — Term "personal property" defined, see § 1-3-41.

JUDICIAL DECISIONS

1. In general.

Absent a legislatively-created "special mode" of assessment for banks providing otherwise, the guarantees of equal and uniform assessment conferred by Mississippi Constitution Article 4 § 112 and Article 7 § 181 extend to banks just as to all other taxpayers. As there is no stature authorizing the assessment of bank intangibles at a rate greater than other personal property in general, §§ 112 and 181 protects such bank property from disproportionate assessment. Calhoun County Bd. of Supvrs. v. Grenada Bank, 543 So. 2d 138 (Miss. 1988).

In determining the equitable portion of the intangible value of a parent bank attributable to branch banks for purposes of intangible property tax, the primary consideration in selecting a basis for the ratio by which a branch's share of the valuation constant will be computed is to arrive at a figure which would fairly, reasonably, and realistically represent a branch's relative worth to the parent bank and all its branches as a whole, i.e., its true value. Calhoun County Bd. of Supvrs. v. Grenada Bank, 543 So. 2d 138 (Miss. 1988).

§ 27-35-13. Assessment in election districts and towns.

The assessment of personal property in each election district of the county or of each city, town and village, shall be entered separately on the roll, so as to show the property of each election district, not embracing a city, town, or village, and in each city, town and village distinctly, apart from all others.

SOURCES: Codes, 1880, § 480; 1892, § 3760; 1906, § 4269; Hemingway's 1917, § 6903; 1930, § 3126; 1942, § 9750.

Cross References — Assessment of personal property, see § 27-35-15.

JUDICIAL DECISIONS

1. In general.

Assessment of personal property for school purposes is sufficient, if it is assessed to owner on sufficient roll at election precinct. Finkbine Lumber Co. v. Batson, 151 Miss. 608, 118 So. 443 (1928).

§ 27-35-15. Personal property; how assessed.

(1) The tax assessors shall annually appraise all personal property subject to taxation in their respective counties at true value and assess it in proportion thereto. They shall set down in the assessment roll the names in full of all persons liable to taxation in the county in alphabetical order under each municipality, but firms or persons owning the same class of property may be listed on the roll together regardless of the alphabetical order. Where there are on the roll more than one (1) person of the same name, the place of residence of each shall be shown, or they shall be otherwise so designated as to identify each and distinguish them. The assessor shall set down each item of personal property liable to taxation and the amount of each individual's taxable property shall be totaled and set down in the column provided, opposite his name. The assessor shall so fill out the blanks on the rolls as to disclose clearly and fully all information indicated by the roll.

The tax assessor shall place in the columns provided on the roll the true value of the property owned by each taxpayer in every road district, school district, levee district or other special taxing district imposing an ad valorem tax; and he shall truly and correctly add every column on the roll and show in the proper column the total amount of property assessed to every taxpayer and the amount assessed to every taxpayer in each and every road district, school district or other special taxing district; and the totals of each column from every page shall be carried to the recapitulation on a page or pages in the back of the roll. The tax assessor shall add the recapitulation and show the total amount of all property assessed in his county and the total for each municipality, school district, road district, levee district or other special taxing district imposing an ad valorem tax. The assessor shall also show in his recapitulation the correct total of each and every column in the roll.

(2) The tax assessors shall include on the personal property roll the list of aircraft received from the State Tax Commission which are liable for registra-

tion but which have not been so registered as required by Title 61, Chapter 15, Mississippi Code of 1972.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769z; 1930, § 3128; 1942, § 9752; Laws, 1920, ch. 323; Laws, 1926, ch. 297; Laws, 1950, ch. 238, § 2; Laws, 1980, ch. 505, § 4; Laws, 1986, ch. 405, § 2; Laws, 1990, ch. 341, § 1, eff from and after July 1, 1990.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Taxation of personal property of banks, see § 27-35-12.

Assessment in election districts, see § 27-35-13.

Taxation of commercial aircraft, see § 27-35-701 et seq.

Motor vehicle ad valorem tax, see § 27-51-33.

Separate assessment of property in road districts, see § 65-19-35.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.
2. Property subject to taxation.

3.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. Generally.

I. UNDER CURRENT LAW.

1. In general.

Assessment of gasoline steam shovel under description of "machinery, tools, implements and equipment," held valid. Byers Mach. Co. v. Cobb Bros. Constr. Co., 182 Miss. 212, 179 So. 565 (1938).

Where personal property has passed from the executors to trustees for its management under the terms of a will, it should be assessed at the domicile of the trustees without reference to that of the testator or of the executors. Millsaps v. City of Jackson, 78 Miss. 537, 30 So. 756 (1901).

2. Property subject to taxation.

A franchise of a private corporation to construct waterworks in the streets of a city is taxable. Adams v. Samuel R. Bullock & Co., 94 Miss. 27, 47 So. 527, 19 Am. Ann. Cas. 165 (1908).

Personal property belonging to the estate of a decedent in the hands of his executors should be assessed for taxation at the domicile of the testator in his lifetime without reference to the domicile of the executors. Millsaps v. City of Jackson, 78 Miss. 537, 30 So. 756 (1901).

3.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. Generally.

Property exempt from taxation cannot be distrained to coerce the payment of a poll tax. Ratliff v. Beale, 74 Miss. 247, 20 So. 865 (1896).

RESEARCH REFERENCES

ALR. Property destined for, or in course of, removal from state as subject to taxation therein. 11 A.L.R.2d 938.

Property taxation of computer software. 82 A.L.R.3d 606.

Situs of aircraft, rolling stock, and vessels for purposes of property taxation. 3 A.L.R.4th 837.

Requirement of full-value real property taxation assessments. 42 A.L.R.4th 676.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 135.

CJS. 84 C.J.S., Taxation §§ 554-566.

§ 27-35-17. Tax list; form; tax commission to provide.

The state tax commission is empowered and directed to prescribe the form of tax lists to be used by the county tax assessors in the assessment of real and personal property for state and county purposes; and said commission shall furnish a copy of each form prescribed to the tax assessor, the chancery clerk and the president of the board of supervisors of each county on or before November 1st in each year, which form shall be used for the assessment to be made in the year following.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769w; 1930, § 3129; 1942, § 9753; Laws, 1918, ch. 134.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — State tax commission, see § 27-3-1 et seq.

JUDICIAL DECISIONS

1. In general.

Where one person owns the soil and another person owns the growing timber thereon, the timber may be separately assessed for taxation. Caston v. Pine Lumber Co., 110 Miss. 165, 69 So. 668 (1915).

A lease giving defendant the right to enter upon land and extract crude products from pine trees from which rosin and turpentine are manufactured, was personal property and assessable as such. Jones v. Adams, 104 Miss. 397, 61 So. 420 (1913).

A turpentine lease owned by a foreign corporation and located in this state, having a commissary for its customers, where it received turpentine and rosin had money employed in business to the amount evidenced by the value of the lease. Union Naval Stores Co. v. Adams, 104 Miss. 299, 61 So. 419 (1913).

The pipes, hydrants, etc., of a waterworks company is included in capital invested in merchandise and manufacture. Adams v. Vicksburg Waterworks Co., 94 Miss. 601, 47 So. 530 (1908).

Growing trees though real estate, may be the subject of ownership separate from the ownership of the land and hence may be separately assessed for taxes. Fox v. Pearl River Lumber Co., 80 Miss. 1, 31 So. 583 (1902).

The tax assessment list provided for by this section [Code 1942, § 9753] places taxable solvent credits on the same basis as property not otherwise enumerated and the fact that a taxpayer has returned part of his solvent credits raises no presumption that he has returned them all. Adams v. Clarke, 80 Miss. 134, 31 So. 216 (1902).

§ 27-35-19. Tax lists; supervisors to furnish to assessors.

The board of supervisors of each county shall furnish the assessor with a sufficient number of the prescribed tax lists for the assessment of real and personal property in accordance with the form of tax lists prepared and prescribed by the state tax commission, and the necessary number of binders for same.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769x; 1930, § 3130; 1942, 9754; Laws, 1918, ch. 134.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-35-21. Tax list made on printed list.

The tax list of every person shall be made out on one of the printed lists; and the blanks in the list shall be filled in ink, and the oath appended shall be taken by the person rendering the list, and be subscribed before and certified by the assessor or other officer authorized to administer oaths. The lists shall be delivered to the assessor on or before the first day of April of the year in which the assessment is made; and he shall preserve them and deliver them, arranged alphabetically and securely bound together, to the board of supervisors. Thereafter these lists shall be preserved by the assessor for a period of three (3) years.

SOURCES: Codes, 1880, § 483; 1892, § 3763; 1906, § 4272; Hemingway's 1917, § 6906; 1930, § 3131; 1942, § 9755.

§ 27-35-23. Taxpayer to furnish list; nonresidents to be assessed.

(1)(a) Except as may be otherwise provided for in subsection (2) of this section, the tax assessor shall call upon each person liable to taxation in his county for a list of his taxable personal property, either in person, or by leaving a copy of the prescribed tax list at his business or his usual place of residence, and it shall be the duty of each person to make out and deliver to the tax assessor, upon demand, and if not demanded, not later than the first day of April in each year, a true list of his taxable property with the true value of each article, specifying all such property of which he was possessed on the next preceding tax lien date in his own right or in the right of his wife or minor child, or as executor, administrator, guardian, trustee, agent, or otherwise, rendering separate lists of the property of each. The taxpayer shall fill in all blanks on the tax lists and show in the proper place all taxable personal property owned by him or by any person for whom he is required to give in taxable property.

(b) In the case of a taxpayer that is a small business, the list provided by a taxpayer under this subsection shall be presumed to be accurate, and the tax assessor shall use the list for the purpose of determining the true value of the personal property unless the assessor has reason to believe that the list does not accurately reflect the extent of the taxpayer's personal property and the value of the property.

(2)(a) If the tax assessor has previously received from the taxpayer true list of the taxpayer's taxable personal property, the tax assessor may, in his discretion, require that the taxpayer furnish him, upon demand, and if not demanded, not later than the first day of April in each year after receipt of such previous list, only with a list of additions and deletions to the tax list the taxpayer has previously provided as may properly update such list and the taxpayer shall not be required to furnish a complete list of his taxable personal property as provided in subsection (1) of this section. In any subsequent year the tax assessor may require the taxpayer to furnish a complete list of his taxable personal property if he considers it necessary.

(b) In the case of a taxpayer that is a small business, the list of additions and deletions provided by a taxpayer under this subsection shall be presumed to be accurate, and the tax assessor shall use the list for the purpose of determining the true value of the personal property unless the assessor has reason to believe that the list does not accurately reflect the extent of the taxpayer's personal property and the value of the property.

(3) As used in this section, the term "small business" means a commercial enterprise with less than twenty-five (25) employees that possesses taxable personal property with a true value of less than Two Hundred Fifty Thousand Dollars ($250,000.00).

(4) The list prescribed in subsection (1) or (2) of this section shall show where the property was situated on the next preceding tax lien date and the taxpayer shall render separate lists for personal property where located in a school district, or a road district, and the list, or lists, required to be rendered by every person shall show clearly the taxing district or municipality in which the property was subject to taxation on the tax lien date next preceding.

(5) Each list shall be verified by oath which the assessor, or his deputy, is authorized and required to administer, to each person, as follows:

"You do solemnly swear (or affirm) that the list of property you have made for purposes of taxation is a just and true account of all property you are required to render subject to taxation in your own right, or that of any other person for whom you ought to give in taxable property, and that each statement of fact is true and correct as stated, and that no property subject to taxation has been omitted and all property has been listed at its true value so help you God."

(6) If any person fails to furnish the assessor with a list of property as required by this section, or if the assessor finds or obtains information of property owned by a nonresident or someone unknown to the assessor, such property shall be appraised by the assessor at the true value at which similar property is appraised. Where the owner is unknown to the tax assessor, the property shall be assessed to the person having the same in charge.

(7) Upon request by the tax assessor, the taxpayer shall provide to the tax assessor whatever reasonable documentation the tax assessor considers necessary to verify the list required pursuant to this section. The documentation

shall be limited to information needed by the tax assessor to arrive at the true value of the property.

(8) The tax assessors shall include on the personal property roll the list of aircraft received from the Department of Revenue which are liable for registration but which have not been so registered as required by Title 61, Chapter 15, Mississippi Code of 1972.

(9) Upon the written request of the taxpayer, the tax assessor shall provide a list of the taxable personal property, appraised value and assessed value for each item listed if the taxpayer has rendered the information needed by him to make up such a list.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 17 (5); 1857, ch. 3, art. 17; 1871, § 1674; 1880, § 479; 1892, § 3755; 1906, § 4264; Hemingway's 1917, § 6898; 1930, § 3132; 1942, § 9756; Laws, 1928, Ex. ch. 31; Laws, 1980, ch. 505, § 5; Laws, 1986, ch. 405, § 3; Laws, 1995, ch. 555, § 1; Laws, 2016, ch. 432, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment added (1)(b), (2)(b) and (3); redesignated former (3) through (8) as (4) through (9); and substituted "Department of Revenue" for "State Tax Commission" in (8).

Cross References — Duties of assessor to gather data, examine records, and to inspect property, see §§ 27-1-19 through 27-1-23.

Taxpayer's estimate of value, see § 27-35-29.

Taxation of corporations and joint stock companies, see § 27-35-31.

Taxation of banks, see §§ 27-35-35 through 27-35-39.

Penalty for failure to list property for taxation, see § 27-35-45.

Assessment of lands, see § 27-35-49.

List interests in buildings, minerals, etc., separately owned, see § 27-35-51.

Schedules to be filed by railroads, see § 27-35-303.

Criminal offenses for failure to render, or fraud in rendering, assessment, see §§ 97-7-1, 97-7-3.

JUDICIAL DECISIONS

1. In general.

Landowner executing option to Federal Government, Jan. 2, 1934, which was accepted by government Jan. 11, held not relieved of personal obligation to pay 1934 taxes. Gloster Lumber Co. v. Adams County, 173 Miss. 865, 163 So. 541 (1935).

A domestic corporation held not taxable on a part of its capital stock invested in shares of the stock of another domestic corporation. Robertson v. Mississippi Valley Co., 120 Miss. 159, 81 So. 799 (1919).

Taxes for a current year became a lien on February 1st under the old statute. Adams v. Lamb-Fish Lumber Co., 114 Miss. 534, 75 So. 378 (1917); State v. Dutton, 117 Miss. 391, 78 So. 146 (1918).

Growing timber on land owned by a different person who owns a fee in the land may be separately assessed for taxation. Caston v. Pine Lumber Co., 110 Miss. 165, 69 So. 668 (1915).

A lease giving defendant the right to enter upon land and extract crude products from pine trees was assessable as personal property. Jones v. Adams, 104 Miss. 397, 61 So. 420 (1913).

Such assessment cannot be made on the land roll. Jones v. Adams, 104 Miss. 397, 61 So. 420 (1913).

A corporation cannot escape taxation by transferring solvent credits to others as its trustees. Adams v. Delta & Pine Land Co., 89 Miss. 817, 42 So. 170 (1906).

The notes and solvent credits of an insolvent bank which passed to an assignee before February (January) first in any year were taxable in the hands of the assignee and he should render them to the assessor. The fact that the creditors of an insolvent bank whose solvent credits were taxed in the hands of an assignee had the debts due them from the bank assessed against them did not constitute double taxation. Gerard v. Duncan, 84 Miss. 731, 36 So. 1034 (1904).

Growing trees, though real estate, may be the subject of ownership separate from the ownership of the land and hence may be separately assessed for taxes. Fox v. Pearl River Lumber Co., 80 Miss. 1, 31 So. 583 (1902).

ATTORNEY GENERAL OPINIONS

The statute requires each person liable to taxation to complete and deliver to the tax assessor the required list of taxable property with the identity of the owner or owners thereof clearly specified thereon and that the identity portion thereof should state whether the owner is an individual, partnership, or corporation, or other type of entity; further, in instances where the identity of the owner is unclear or unknown, the statute requires the tax assessor to assess the property to the individual person having charge of the taxable property. Andrzejewski, August 21, 1998, A.G. Op. #98-0495.

Any true list received by the tax assessor on or after April 2nd which is hand-delivered or which carries a postmark of April 2nd or later is not timely delivered. Blackledge, Feb. 20, 2004, A.G. Op. 04-0061.

A current year assessment is increased by 10% when a taxpayer fails to deliver a true list by the date required by law. Blackledge, Feb. 20, 2004, A.G. Op. 04-0061.

RESEARCH REFERENCES

ALR. Property tax: Business situs of intangibles held in trust in state other than beneficiary's domicil. 59 A.L.R.3d 837.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 648 et seq.

CJS. 84 C.J.S., Taxation § 541 et seq.

§ 27-35-25. Assessment rolls; State Tax Commission to prescribe form and have such rolls maintained on electronic media.

The State Tax Commission is authorized, empowered and directed to prescribe the form of the assessment rolls for assessing the real and personal property in each county, and to have such rolls prepared and maintained on electronic media prescribed by the commission. The assessment rolls so prescribed shall be the official and legal rolls for the assessment of real and personal property in this state.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769y; 1930, § 3133; 1942, § 9757; Laws, 1920, ch. 323; Laws, 1968, ch. 506, § 25; Laws, 1999, ch. 409, § 1, eff from and after July 1, 2000.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Department of Revenue, see § 27-3-1 et seq.

JUDICIAL DECISIONS

1. In general.

State tax commission could not review order of board of supervisors made under statute empowering board to increase or reduce assessment of property for taxation. Board of Supvrs. v. Laurel Mills, 130 Miss. 454, 94 So. 448 (1923).

§ 27-35-27. Assessor to have one of the rolls.

One (1) of the personal assessment rolls and also one (1) of the real assessment rolls shall be delivered to the assessor, and the others shall be kept by the clerk of the board of supervisors, to be used in making the copies hereinafter provided.

SOURCES: Codes, 1871, § 1669; 1880, § 476; 1892, § 3755; 1906, § 4262; Hemingway's 1917, § 6896; 1930, § 3134; 1942, § 9758.

JUDICIAL DECISIONS

1. In general.

Assessment for taxation can only be made by the officer designated by law, and where the Constitution devolves the duty of assessing upon a certain officer the legislature cannot substitute another. Adams v. Tonella, 70 Miss. 701, 14 So. 17 (1893).

§ 27-35-29. How value estimated; proceedings in case of undervaluation.

It shall be the duty of each person fixing the value of his property to estimate the same at its true value at the time of valuation, and not what it might sell for at a forced sale, but what he would be willing and would expect to accept for it if he were disposed to sell it. It shall be the duty of the assessor to report, on oath, to the board of supervisors, at the first meeting of the board after completing his roll, or so soon thereafter as possible, a list of all valuations made by owners of property which are in his opinion below the true value of the property, with the names of the parties making the valuations. It shall be the duty of the board to examine the list, and, upon discovery of undervaluation of any property, the board at the meeting for the equalization of the rolls or at any subsequent meeting before final approval of the rolls, shall increase the valuation as it may deem just and proper. In case it shall deem that the undervaluation was made wilfully, to escape the taxation to which the property undervalued is justly liable, to report the facts of each case, with the name of the person or persons by whom made, to the grand jury of the next circuit court of the county.

SOURCES: Codes, 1857, ch. 3, art. 17; 1871, § 1674; 1880, § 479; 1892, § 3759; 1906, § 4268; Hemingway's 1917, § 6902; 1930, § 3135; 1942, § 9759; Laws, 1980, ch. 505, § 6, eff from and after passage (approved May 16, 1980).

Cross References — Duties of assessor to gather data, examine records, and to inspect property, see §§ 27-1-19 through 27-1-23.

Report of persons making incorrect statements as to property, see § 27-35-41.
Procedure upon taxpayer's refusal to give assessment, see § 27-35-43.
Assessment of lands, see § 27-35-49.
Equalization of rolls, see § 27-35-87.
Procedure in changing or correcting assessments, see § 27-35-149.

JUDICIAL DECISIONS

1. In general.

County real property tax assessments violate equal protection clause of Fourteenth Amendment where county's adjustments to assessments for properties that have not been recently sold are too small to seasonably dissipate disparities, and where properties that have not been recently sold have thus been intentionally systematically undervalued. Allegheny Pittsburgh Coal Co. v. County Comm'n, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989).

In appeal of value placed on copying and duplicating machines, market data method was properly used to arrive at actual cash value since it was the method used for other manufacturers leasing machines and equipment in the taxing district and since the income capitalization method desired by the appellant was complicated and subject to variables tax authorities could not check out. Xerox Corp. v. City of Jackson, 328 So. 2d 330 (Miss. 1976).

An oil or gas lease with right of entry is an estate in land, subject to ad valorem taxation, but not including the oil or gas as a separate item of valuation. Gulf Ref. Co. v. Stone, 197 Miss. 713, 21 So. 2d 19 (1945); Smith County Oil Co. v. Board of Supvrs., 200 Miss. 18, 25 So. 2d 457 (1946), suggestion of error overruled on other grounds, 200 Miss. 26, 26 So. 2d 685 (1946), overruled on other grounds, Bailey v. Federal Land Bank, 206 Miss. 354, 40 So. 2d 173 (1949).

RESEARCH REFERENCES

ALR. Who may complain of underassessment or nonassessment of property for taxation. 5 A.L.R.2d 576.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 667 et seq., 728 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 20. (allegation of complaint, petition, or declaration of assessor's intentional disproportionate valuation of property).

CJS. 84 C.J.S., Taxation §§ 568-604.

§ 27-35-31. Corporations and joint stock companies; how taxed.

The property of each corporation or joint stock company (whether organized under the laws of this state or any other state or country) shall be assessed and taxed as that of a person; and the laws, providing for the assessment and collection of taxes on the property of persons, shall apply to the assessment and collection of taxes on the property of corporations and joint stock companies. All shares or certificates of stock issued by any such corporation or joint stock company shall be exempt from taxation and shall not be returned for assessment. The president, secretary or other officer of the same shall render, under oath, the tax list, in its name, of its property, real or personal or both, subject to taxation, to the assessor at the same time that persons are required to render their assessments of their property. Its land and tangible personal property shall be appraised at true value and assessed and taxed where situated on the first day of January of the year; and the accounts, notes, bonds, shares or certificates of stock, bank deposits, rights, money or other intangible property subject to taxation owned by a corporation or joint stock company organized under the laws of this state shall be assessed and taxed at its domicile; but any such intangible personal property, which would be exempt from taxation according to law, if owned by a person shall be exempt from taxation when owned by a corporation or joint stock company and shall not be returned for assessment. Such intangible personal property owned by a corporation or joint stock company organized under the laws of any state or country other than Mississippi shall be exempt from taxation and shall not be returned for assessment. This section shall not apply to persons, firms or corporations assessed by the state railroad assessors or domestic insurance companies; but the shares or certificates of stock issued by a railroad, sleeping car, express, telephone or telegraph company or a freight car line or a railroad equipment company or a domestic insurance company shall be exempt from taxation in the hands of the stockholder and shall not be returned for taxation by such stockholder.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 9 (43); 1857, ch. 3, art. 24; 1880, § 498; 1892, § 3758; 1906, § 4267; Hemingway's 1917, § 6901; 1930, § 3136; 1942, § 9760; Laws, 1926, ch. 258; Laws, 1980, ch. 505, § 7, eff from and after passage (approved May 16, 1980).

Cross References — Constitutional provisions for taxation of corporations, see Miss. Const. Art. 7, §§ 181, 182.

Corporate franchise tax, see § 27-13-1 et seq.

Tax exemptions, see § 27-31-1 et seq.

Situs for taxation, see § 27-35-9.

Taxpayer's duty to furnish list of taxable personal property, see § 27-35-23.

Assessment of lands, see § 27-35-49.

Assessment of railroads and other public service corporations, see § 27-35-301 et seq.

Assessing and taxing property of telephone companies in not more than six counties, see § 27-35-319.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.
3. —Foreign corporations.
4. —Appeal from assessment.

1. Validity.

A provision that a corporation shall be assessed at the market value of their stock paid in less real estate owned which is to be separately assessed as other real estate is not unconstitutional. People's Whse. Co. v. Yazoo City, 97 Miss. 500, 52 So. 481 (1910).

This section [Code 1942, § 9760] is held to be constitutional. Panola County v. C.M. Carrier & Son, 89 Miss. 277, 42 So. 347 (1906).

2. Construction and application.

Back assessment upon any portion of the capital stock of a corporation operating a plantation and nursery would not be barred because all of the capital stock of the corporation had been invested in real and personal property, which had been assessed and subjected to taxation, where the corporation had not been assessed upon capital stock eo nomine or paid taxes upon the value of its capital stock as such. Robertson v. United States Nursery Co., 121 Miss. 14, 83 So. 307 (1919).

And where the aggregate market value of the stock of the corporation exceeds the value of the real and personal property, a tax on the difference is a tax on the value of the franchise of the corporation and is proper. People's Whse. Co. v. Yazoo City, 97 Miss. 500, 52 So. 481 (1910).

Capital invested in merchandising and manufacturing does not include a corporate franchise to construct waterworks in a city. Adams v. Samuel R. Bullock & Co., 94 Miss. 27, 47 So. 527, 19 Am. Ann. Cas. 165 (1908).

A corporation cannot escape taxation by transferring its solvent credits to its stockholders as trustees for it. Adams v. Delta & Pine Land Co., 89 Miss. 817, 42 So. 170 (1906).

3. —Foreign corporations.

The equipment of a corporate nonresident highway contractor has no tax situs in the state where not in the state on the first day of January in consequence of having been removed to the home state for repairs at a time when the job was shut down by bad weather. State v. Dixie Contractors, 240 Miss. 793, 129 So. 2d 386 (1961).

Where a foreign corporation, engaged in the laying of pipelines for transmission of natural gas, stored machinery and equipment on tax day and for three months prior to the tax day, this material and equipment was subject to personal property tax. Anderson Bros. Corp. v. Board of Supvrs., 221 Miss. 361, 73 So. 2d 105 (1954), appeal dismissed, 348 U.S. 923, 75 S. Ct. 341, 99 L. Ed. 724 (1955).

Franchise granted to nonresident corporation to operate bus in state held not exempt from taxation. Teche Lines v. Board of Supvrs., 165 Miss. 594, 142 So. 24 (1932).

The shares of capital stock of a corporation are "personal property," and the state has the power to tax shares of stock of a foreign corporation which are owned by residents of the state. Barnes v. Jones, 139 Miss. 675, 103 So. 773, 43 A.L.R. 673 (1925).

4. —Appeal from assessment.

An appeal to the circuit court by attorney-general from assessment of taxes made by the board of supervisors must be tried de novo in which the circuit court tries the issue and renders such judgment as the board of supervisors should have rendered in equalizing the taxes. Knox v. L.N. Dantzler Lumber Co., 148 Miss. 834, 114 So. 873 (1927).

On appeal the circuit court has the same power that the board of supervisors had from which the appeal was taken. Knox v. L.N. Dantzler Lumber Co., 148 Miss. 834, 114 So. 873 (1927).

Tax assessment on corporations and joint stock companies not made by assessors and the board of supervisors may be made by the circuit court on appeal. Knox v. L.N. Dantzler Lumber Co., 148 Miss. 834, 114 So. 873 (1927).

The legislature may authorize the circuit court on appeal from the tax board of equalization to try a case anew. Knox v. L.N. Dantzler Lumber Co., 148 Miss. 834, 114 So. 873 (1927).

On appeal from assessment of taxes the circuit court may require production and inspection of books and papers showing the value of property, and where the evidence shows that the taxpayer has books and papers showing the value of property involved in the assessment the circuit court, on appeal from tax assessment, should order their production. Knox v. L.N. Dantzler Lumber Co., 148 Miss. 834, 114 So. 873 (1927).

RESEARCH REFERENCES

ALR. Inclusion of investments in stock of other corporation in fixing base for taxation of corporation. 11 A.L.R.2d 323.

Validity, under import-export clause of Federal Constitution, of state tax on corporations. 20 A.L.R.2d 152.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 671.

CJS. 84 C.J.S., Taxation § 614 et seq.

§ 27-35-33. Assessment of money loaned.

Every person, resident or nonresident, whether corporate or otherwise, and the agent of such nonresident, having capital employed in any kind of trade or business or owning securities or other intangible property subject to taxation under the laws of the state, shall be taxable for the same in the county in which such person may reside, or have a place of business, or be temporarily located at the time of the assessment. If any such person fail or refuse to give in such property on oath, or if the assessor have cause to believe that such person has not rendered a true account of all such property, he shall assess to the person such amount as he shall have reason to believe correct, according to the best information he can procure; and he shall forward to the party or his agent, in writing, a notification of the assessment having been made. The assessor is authorized to address written interrogatories to any agent or any nonresident, or to any other person, for the purpose of obtaining such information, and to require written answers thereof on oath, which oath the assessor is authorized to administer. If any person, being so interrogated, shall refuse to answer the interrogatories, on oath, within a reasonable time, he shall be liable to pay the sum of Five Hundred Dollars ($500.00), to be recovered by action in the name of the county for the use of the county; and it shall be the duty of the assessor to cause such suit to be brought.

SOURCES: Codes, 1857, ch. 3, art. 23; 1871, § 1682; 1880, § 497; 1892, § 3757; 1906, § 4266; Hemingway's 1917, § 6900; 1930, § 3137; 1942, § 9761; Laws, 1995, ch. 539, § 2, eff from and after January 1, 1995.

JUDICIAL DECISIONS

1. Construction and application.
2. —Nonresident persons or corporations.

1. Construction and application.

An assessment of vendor's lien notes and the real estate for which they were given is not double taxation. Adams v. Kuykendall, 83 Miss. 571, 35 So. 830 (1904).

Money on hand, on deposit, or loaned is not covered by the phrase "amount of indebtedness which he regards as probably collectible," and the approval of such assessment does not preclude a subsequent assessment of money which has escaped assessment. Adams v. Clarke, 80 Miss. 134, 31 So. 216 (1902).

2. —Nonresident persons or corporations.

Loans made by foreign corporation consummated upon approval by corporation's New York office and traveling auditor's financial report, and evidenced by note kept with collateral in New York office and payable there, held not to have such local "business situs" as to subject them to local taxation. Gulley v. C.I.T. Corp., 168 Miss. 268, 150 So. 367 (1933).

A foreign corporation held liable to payment of taxes on money invested in a business of manufacturing naval stores in this state. Harrison Naval Stores Co. v. Adams, 104 Miss. 381, 61 So. 417 (1913).

This section [Code 1942, § 9761] applies only to resident lenders of money and such nonresident lenders as have a place of business or who have localized their property in this state so as to give it a situs here. Adams v. Colonial & United States Mtg. Co., 82 Miss. 263, 34 So. 482 (1903); Armstrong v. Alliance Trust Co., 88 F.2d 449 (5th Cir. 1937).

A loan of money to a person in this state by a nonresident who has no place of business, location, or agent in this state but accomplishes the loan elsewhere, is not taxable here, notwithstanding negotiations for the loan were made by persons in this state and the loan is secured by mortgage on property in this state. State v. Smith, 68 Miss. 79, 8 So. 294 (1890).

§ 27-35-35. Banks; how taxed.

The president, cashier or other officer of each bank or banking association in this state, whether organized under the laws of this state or the United States, shall make out and deliver to the county tax assessor, under oath, on or before April 1 of each year, a statement, on the form prescribed and furnished by the state tax commission, of its assets and liabilities, and of the number and par value of all the shares of its capital stock paid in (preferred or common) and the amount of debentures, if any, and of all surplus, undivided profits, reserves or accumulations of any sort; and then the amount of all due and unpaid taxes, declared and unpaid dividends, interest, actual depreciation of personal property not entered on the books, or other similar items, constituting a debt against the reserves of the bank, which when deducted from the sum of the capital and reserves, as above enumerated, shall show correctly the actual net worth of the bank. From the net worth of the bank thus determined, there shall be deducted the amount of capital invested in real estate owned by the bank, as shown by its books, the par value of preferred stock and debentures owned by the reconstruction finance corporation or other similar government agencies, and "earned surplus" to the extent authorized by Section 81-3-11, Mississippi Code of 1972, and the remainder shall be the basis of the assessment of the intangibles of the bank or of the capital to the owner thereof in case the bank be not a corporation or joint stock company. The taxes levied on any bank or banking association shall be a first lien on its assets. A bank not a corporation or stock company shall make a similar return of its capital and be assessed and pay taxes to the same extent as a bank or banking association.

The tax provided for in Sections 27-35-35 through 27-35-39 shall be in addition to the tax on real property of banks as provided in Section 27-35-11 and the ad valorem tax on the personal property of banks as provided in Section 27-35-12. All ad valorem taxes on personal property paid by a bank to any county, district or municipality pursuant to Section 27-35-12, shall be credited against and reduce the tax provided for in Sections 27-35-35 through 27-35-39. Any tax assessed and paid by a bank to any county, district or municipality on the assessed value of its intangibles pursuant to Sections 27-35-35 through 27-35-39 shall be a credit against the corporation franchise tax of that bank due pursuant to Chapter 13, Title 27, Mississippi Code of 1972, in lieu of a deduction thereof from the income of such bank for purposes of Chapter 7, Title 27, Mississippi Code of 1972.

SOURCES: Codes, 1892, § 3764; 1906, § 4273; Hemingway's 1917, § 6907; 1930, § 3138; 1942, § 9762; Laws, 1890, p. 6; Laws, 1920, ch. 193; Laws, 1944, ch. 259, § 1; Laws, 1978, ch. 410, § 5, eff from and after January 1, 1979.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Constitutional provision for taxation of banks, see Miss. Const. Art. 7, § 181.

Duties of assessor to gather data, examine records, and to inspect property, see §§ 27-1-19 through 27-1-23.

Situs for taxation, see § 27-35-9.

Assessment of lands of banks, see § 27-35-11.

Assessment of personal property of banks, see § 27-35-12.

Taxpayer's duty to furnish list of taxable personal property, see § 27-35-23.

Assessment of lands, generally, see § 27-35-49.

Criminal offense for banker's failure to render assessment, see § 97-7-3.

JUDICIAL DECISIONS

1. Construction and application, in general.
2. Determination of assets taxable; valuation of stock.
3. —Valuation of stock.
4. National bank stock.

1. Construction and application, in general.

Absent a legislatively-created "special mode" of assessment for banks providing otherwise, the guarantees of equal and uniform assessment conferred by Mississippi Constitution Article 4 § 112 and Article 7 § 181 extend to banks just as to all other taxpayers. As there is no stature authorizing the assessment of bank intangibles at a rate greater than other personal property in general, §§ 112 and 181 protects such bank property from disproportionate assessment. Calhoun County Bd. of Supvrs. v. Grenada Bank, 543 So. 2d 138 (Miss. 1988).

Bad debt reserves and allocations are not "other similar items constituting debts" entitled to deduction under § 27-35-35 because bad debt reserves do not represent realized debts chargeable against the assets of the bank. However, additions made to the reserve to replenish the fund for bad debts actually covered would represent realized debts chargeable against the assets of the bank and would therefore be deductible under § 27-35-35 as "other such items." Calhoun County Bd. of Supvrs. v. Grenada Bank, 543 So. 2d 138 (Miss. 1988).

Section 27-35-35 and § 27-35-37 are not unconstitutionally vague and ambiguous in that they fail to set forth a specific formula for valuation of branch bank intangibles. Any vagueness or ambiguity in § 27-35-35 and § 27-35-37 when read in isolation is cured by reading them in pari materia with other statutes dealing with the same or similar subjects, especially § 27-13-13. Additionally, § 27-35-35 is not unconstitutional on the ground that it fails to allow deduction from taxable capital (i.e., net worth) those amounts invested in tax exempt government securities since government obligations are expressly exempted from ad valorem taxation by § 27-31-1(u). It is clear that § 27-31-1(u) is to be read in pari materia with all taxation statutes and nothing in § 27-35-35 implies that the general exemptions of § 27-31-1 are inapplicable to banks. Calhoun County Bd. of Supvrs. v. Grenada Bank, 543 So. 2d 138 (Miss. 1988).

Where bank voluntarily paid taxes and did not avail itself of statutory remedies to cure alleged errors, receiver of bank held not entitled to mandamus to compel attorney general to approve refund. Selig v. Price, 167 Miss. 612, 142 So. 504 (1932).

Statute exempting surplus of banks from taxation until outstanding guaranty certificates are liquidated does not violate constitutional provision prohibiting amendments by reference to title only, on the ground that it attempts to amend, without insertion of the section in full as amended, a section providing for the manner of arriving at the value of the shares of capital stock for tax purposes. City of Jackson v. Deposit Guar. Bank & Trust Co., 160 Miss. 752, 133 So. 195 (1931).

Bank's conditional sale of realty to avoid statute directing charging off of realty held over five years was deemed bona fide for tax purposes. Board of Supvrs. v. Riverside Bank, 158 Miss. 653, 131 So. 80 (1930).

The action of the board of supervisors equalizing the assessments of a bank is res adjudicata and cannot be questioned except on direct appeal by a party in interest. Wray v. Cleveland State Bank, 134 Miss. 41, 98 So. 442 (1924).

On an unsworn statement made of the property of a bank to the assessor, the assessment thereon is not void because statement was not sworn to. Robertson v. Bank of Yazoo City, 123 Miss. 380, 85 So. 177 (1920).

Shares of the capital stock in a bank are taxed through the bank regardless of how the capital is invested. Bank of Oxford v. Board of Mayor, 70 Miss. 504, 12 So. 203 (1893).

2. Determination of assets taxable; valuation of stock.

"Surplus" of bank exempted from taxation means excess in aggregate value of all assets over sum of all liabilities, including capital stock. Board of Supvrs. v. Jefferson County Bank, 171 Miss. 50, 156 So. 599 (1934).

Surplus of bank exempted from taxation is real, and not mere book surplus. Board of Supvrs. v. Jefferson County Bank, 171 Miss. 50, 156 So. 599 (1934).

Book surplus of bank, which was completely wiped out by its losses, was not tax exempt. Board of Supvrs. v. Jefferson County Bank, 171 Miss. 50, 156 So. 599 (1934).

Bank's "capital stock and surplus" is aggregate true value of its assets, including lands and personal property; bank's "capital stock and surplus" for taxation is difference between aggregate true value of realty and total true value of assets, including land and personalty. Board of Supvrs. v. Riverside Bank, 158 Miss. 653, 131 So. 80 (1930).

Assessed valuation of bank's realty for 1928 did not determine value of realty for taxing its personalty in 1929. Board of Supvrs. v. Riverside Bank, 158 Miss. 653, 131 So. 80 (1930).

True value of bank real estate must be deducted from aggregate true value of assets in determining true value of capital stock for taxation. Bank of Tupelo v. Board of Supvrs., 155 Miss. 436, 124 So. 482 (1929).

City may not assess part of capital, surplus, and undivided profits invested by bank in land outside city limits. Merchants' & Farmers' Bank v. City of Kosciusko, 149 Miss. 835, 116 So. 88 (1928).

Part of bank's capital, surplus, and undivided profits invested in land is assessed as other land. Merchants' & Farmers' Bank v. City of Kosciusko, 149 Miss. 835, 116 So. 88 (1928).

A bank is required to give the sum of its undivided profits, surplus and accumulations, but not any fictitious values which may appear on its books. Bank of Commerce v. Adams County, 130 Miss. 37, 93 So. 442 (1922).

Taxing authorities did not violate constitutional provisions by assessing for taxes the capital stock of a bank at par augmented by a surplus of undivided profits, less its real estate at full value, although other property in the county was underassessed. Magnolia Bank v. Board of Supvrs., 111 Miss. 857, 72 So. 697, 3 A.L.R. 1365 (1916), error dismissed, 248 U.S. 546, 39 S. Ct. 135, 63 L. Ed. 414 (1919).

A case where a bank made an improper return did not preclude the state revenue agent from assessing their capital stock, surplus and undivided profit as omitted property. Adams v. People's Bank of Biloxi, 108 Miss. 346, 66 So. 407 (1914).

3. —Valuation of stock.

Assessments of bank shares estimated at par and increased by value of surplus held proper, though assessment rolls unnecessarily set forth manner of arriving at value. Miller v. Citizens' Nat'l Bank, 144 Miss. 533, 110 So. 439 (1926).

The shares of a bank should be assessed at their true value. Bank of Commerce v. Adams County, 130 Miss. 37, 93 So. 442 (1922).

Shares of the capital stock of a bank should be assessed at their real or market value, not at their face value. State ex rel. Dist. Att'y v. Simmons, 70 Miss. 485, 12

So. 477 (1892); Bank of Oxford v. Board of Supvrs., 79 Miss. 152, 29 So. 825 (1901).

A bank in reporting its capital stock for taxation must give it in at its market value and cannot deduct therefrom the amount of its capital or assets invested in non-taxable securities. Bank of Oxford v. Board of Mayor, 70 Miss. 504, 12 So. 203 (1893).

4. National bank stock.

An action to enforce payment of taxes assessed by a state and its governmental subdivisions against national bank stock, which defendant, on taking over the assets of the bank upon insolvency, has convenanted to pay, is not removable from a state to a federal court as one arising under a law of the United States by reason of the fact that such stock may be taxed by the state only as permitted by federal legislation. Gully v. First Nat'l Bank, 299 U.S. 109, 57 S. Ct. 96, 81 L. Ed. 70 (1936).

Where assessment roll showed that assessment was against national bank, court would take judicial notice that bank was a fiscal agency of the federal government, which the city was without the power to tax except by special grant of Congress, and would conclude, for the purpose of removal to federal court, that city was relying upon the federal statute to sustain its right to make the assessment. City of Hattiesburg v. First Nat'l Bank, 8 F. Supp. 157 (S.D. Miss. 1934), aff'd, 9 F. Supp. 519 (D. Miss. 1935).

Election by state to tax the shares of national banks according to their value as permitted under Act of Congress (12 USCS § 548) exhausted its right to tax such bank, or its shares, or the income therefrom; and, accordingly, the state legislature did not intend, under the Income Tax Act of 1934, to tax the income dividends derived from such shares. Mississippi State Tax Comm'n v. Brown, 188 Miss. 483, 193 So. 794, 127 A.L.R. 919 (1940), error overruled, 188 Miss. 516, 195 So. 465, 127 A.L.R. 919 (1940).

Stock of a national bank in the hands of its stockholders may be assessed, and such assessment is not in violation of the federal statutes with reference to national banks. Adams v. First Nat'l Bank, 116 Miss. 450, 77 So. 195 (1918).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 375.

CJS. 84 C.J.S., Taxation §§ 641-644.

§ 27-35-37. Branch banks, how assessed.

At the time fixed by law for the assessment of banks, the person in charge of a branch bank shall furnish the assessor, under oath, a statement showing the amount of the capital of the parent bank employed by it, less that invested in real estate of the said branch bank, and the assessor shall assess it accordingly. The said real estate shall be assessed where situated as other real estate. The branch bank shall pay taxes, state, county and municipal, upon such assessment in the county where located, at the time and in the manner that banks are required by law to pay taxes. This shall not apply to agents who do not sell exchange, but simply make collections. The amount of capital so assessed against the branch bank shall be credited on the assessment of capital of the parent bank.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art 17 (7); 1857, ch. 3, art 15; 1871, § 1668; 1880, § 473; 1892, § 3750; 1906, § 4259; Hemingway's 1917, § 6892; 1930, § 3139; 1942, § 9763.

JUDICIAL DECISIONS

1. In general.

Section 27-35-35 and § 27-35-37 are not unconstitutionally vague and ambiguous in that they fail to set forth a specific formula for valuation of branch bank intangibles. Any vagueness or ambiguity in § 27-35-35 and § 27-35-37 when read in isolation is cured by reading them in pari materia with other statutes dealing with the same or similar subjects, especially § 27-13-13. Additionally, § 27-35-35 is not unconstitutional on the ground that it fails to allow deduction from taxable capital (i.e., net worth) those amounts invested in tax exempt government securities since government obligations are expressly exempted from ad valorem taxation by § 27-31-1(u). It is clear that § 27-31-1(u) is to be read in pari materia with all taxation statutes and nothing in § 27-35-35 implies that the general exemptions of § 27-31-1 are inapplicable to banks. Calhoun County Bd. of Supvrs. v. Grenada Bank, 543 So. 2d 138 (Miss. 1988).

In determining the equitable portion of the intangible value of a parent bank attributable to branch banks for purposes of intangible property tax, the primary consideration in selecting a basis for the ratio by which a branch's share of the valuation constant will be computed is to arrive at a figure which would fairly, reasonably, and realistically represent a branch's relative worth to the parent bank and all its branches as a whole, i.e., its true value. Calhoun County Bd. of Supvrs. v. Grenada Bank, 543 So. 2d 138 (Miss. 1988).

§ 27-35-39. Banks; tax payment date; consequences of nonpayment.

Every bank or banking association shall, on or before the first day of December in each year, pay to the collector of taxes in the county in which such bank or association is located, the amount of state and county taxes due by the assessment, which shall be the per centum levied for the state and county severally on the value of property, real and personal; and for any failure to pay such taxes, its assets shall be liable to be proceeded against and dealt with as provided by law in other cases for failure to pay taxes.

SOURCES: Codes, 1892, § 3765; 1906, § 4274; Hemingway's 1917, § 6908; 1930, § 3140; 1942, § 9764.

§ 27-35-41. Certain persons reported by assessor.

If the assessor thinks that any person has not given in a correct statement of his credits or choses in action, or any other property, he shall report the same to the board of supervisors, with the grounds of his belief. The board may require such person to produce before it his books or other evidence, and, after full investigation, the board may cause a proper assessment to be made of the choses in action or credits or other property of such person.

SOURCES: Codes, 1880, § 485; 1892, § 3767; 1906, § 4276; Hemingway's 1917, § 6910; 1930, § 3141; 1942, § 9765.

Cross References — Taxpayer's estimate of value of property for assessment, see § 27-35-29.

§ 27-35-43. Duty of assessor and district attorney in case taxpayer refuse to give his assessment.

The assessor shall furnish to the district attorney the names of all persons who wilfully neglect or refuse to give in taxable property, as required by law, and the district attorney shall present the matter to the grand jury. The assessor shall assess said property at such value as he shall think just, according to the best information he can obtain.

SOURCES: Codes, 1857, ch. 3, art 17; 1871, § 1674; 1880, § 479; 1892, § 3756; 1906, § 4265; Hemingway's 1917, § 6899; 1930, § 3142; 1942, § 9766.

Cross References — Taxpayer's estimate of value of property for assessment, see § 27-35-29.

§ 27-35-45. Penalty for failure to list personal property for taxation.

If any person shall fail to list for assessment, as required by law, any personal property which is taxable under the laws of the State of Mississippi, and which said person should list for assessment under the laws of the state, or shall intentionally fail to provide the tax assessor with any documentation that the tax assessor considers necessary to verify the list, the current year assessment shall be increased by ten percent (10%).

SOURCES: Codes, 1930, § 3143; 1942, § 9767; Laws, 1924, ch. 114; Laws, 1995, ch. 555, § 2, eff from and after October 1, 1995.

ATTORNEY GENERAL OPINIONS

A current year assessment is increased by 10% when a taxpayer fails to deliver a true list by the date required by law. Blackledge, Feb. 20, 2004, A.G. Op. 04-0061.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 650.

CJS. 84 C.J.S., Taxation § 492 et seq.

§ 27-35-47. Land; when to be assessed.

Land shall be assessed for ad valorem taxation for the year 1950 and annually thereafter.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769b1; 1930, § 3144; 1942, § 9768; Laws, 1920, ch. 323; Laws, 1926, ch. 298; Laws, 1950, ch. 298, § 1.

JUDICIAL DECISIONS

1. In general.

Under a former statute providing for biennial assessments, an assessment was a valid assessment for both years. Kuhn v. Hague, 236 Miss. 74, 109 So. 2d 627 (1959).

§ 27-35-49. Assessment of lands; appraisal according to true value.

It shall be the duty of the tax assessor to assess all the lands in his county and he shall require the owner, agent, or person having possession, or charge, of any lands, to render a list of all lands owned, or in charge, or in possession, of such owner, agent or person, and land shall be appraised according to its true value and assessed in proportion thereto, taking into consideration the improvements thereon.

Every person owning or being in possession, or in charge, of any land shall deliver to the tax assessor on demand, and in any event, not later than April first in each year, a list of all lands owned by, or in possession, or in charge, made out on the tax lists prescribed; and showing the total number of acres (except the land be platted by blocks and lots), the total number of acres of cultivatable lands and the value thereof, and the number of acres of uncultivatable land and the value thereof and the number of acres devoted to agricultural purposes as of January 1 of each year; and buildings or improvements subject to taxation on any lands returned for assessment. If the lands be surveyed and platted, it shall be returned so as to clearly identify it by the recorded plat thereof, and the list rendered shall disclose the value of each lot and the value of any buildings, structures, or improvements thereon. Any person required by this section to render a list of any lands shall show in what road district, school district, levee district, municipality, or other taxing district, the same is located. If any person shall deliver or disclose to an assessor, or deputy assessor, a list, statement or return in regard to his land which, in the opinion of the assessor, or deputy assessor, is false or fraudulent, or contains any understatement or undervaluation, or fails to show the proper classification of lands, or fails to show buildings and improvements, or other elements of value, the assessor shall make an assessment of the land with the proper classification thereof including the omitted things, at a valuation equal to the value at which like lands similarly situated are assessed. Lands not given in by any person shall be assessed in the same manner by the assessor at a valuation equal to the assessment of other like lands similarly situated and all buildings and improvements, or other elements of value shall in all cases be separately valued and assessed.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art 17 (13); 1857, ch. 3, art 18; 1871, § 1675; 1880, § 489; 1892, § 3772; 1906, § 4281; Hemingway's 1917, § 6915; 1930, § 3145; 1942, § 9769; Laws, 1928, Ex ch. 58; Laws, 1950, ch. 298, § 2; Laws, 1980, ch. 505, § 8; Laws, 1998, ch. 454, § 1, eff from and after July 1, 1998.

Cross References — Duties of assessor to gather data, examine records, and to inspect property, see §§ 27-1-19 through 27-1-23.

Taxpayer's duty to furnish list of taxable personal property, see § 27-35-23.

Taxpayer's estimate of value of property for assessment, see § 27-35-29.

Assessment of corporations and joint stock companies, see § 27-35-31.

Taxation of banks, see §§ 27-35-35 through 27-35-39.

Taxation of buildings, minerals, etc., separately owned, see § 27-35-51.

Assessment of lands redeemed or purchased from state, see §§ 27-35-67, 27-35-69.

Procedure for change of assessment, see § 27-35-149.

JUDICIAL DECISIONS

1. In general.
2. Valuation.
3. —Particular elements of valuation.
4. Assessment of timber on lands.

1. In general.

Property valuation may consider the gross income generated by the property as an indicator of value. It is not, therefore, a constitutional violation to value differently otherwise identical property if the disparate values result from disparate revenue-generating capabilities. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 (Miss. 1989).

The constitutional requirement of uniformity and equality in taxation is satisfied when, in establishing the true value of property, the public assessor considers all factors affecting the value of the property and employs the same assessment ratio as is applied to other like properties. Thus, where the assessor considered the amount of federal subsidies received by a taxpayer as the owner of the property, § 112 of the Mississippi Constitution and the Equal Protection Clause of the United States Constitution afforded the taxpayers no right to relief absent a showing that other federally subsidized housing projects were treated differently or that the assessor did not consider all factors affecting value. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 (Miss. 1989).

In a quiet title action, arising out of a tax sale, in which the county in which the land was located was in issue, the landowner had the burden of seeing that his land was assessed in the county in which it was located. Guess v. Riverside Farms, Inc., 340 So. 2d 6 (Miss. 1976).

Burden of proof to overturn the assessment by a preponderance of the evidence is upon the taxpayer. McArdle's Estate v. City of Jackson, 215 Miss. 571, 61 So. 2d 400 (1952).

In an action attacking validity of tax assessment, a request for an instruction that there was no presumption that property was assessed at its proper taxable value and jury should determine validity of assessment only upon the evidence which had been misleading as the burden of proof was properly refused. McArdle's Estate v. City of Jackson, 215 Miss. 571, 61 So. 2d 400 (1952).

In an action attacking the validity of city tax assessment where offer approved did not show percentage basis of true and market value upon which the county assessed property, exclusion of assessment of the same property by the county was not error. McArdle's Estate v. City of Jackson, 215 Miss. 571, 61 So. 2d 400 (1952).

Notwithstanding that defendants in an action involving title to a strip of land adjacent to land owned by them had acquired title thereto by continuous adverse possession for ten years, such title could be lost by assessment and sale for taxes; and, therefore, complainants should be permitted to prove a valid assessment and sale for taxes and acquisition by them of the tax title. Cotten v. Cotten, 203 Miss. 316, 35 So. 2d 61 (1948).

Neither this section [Code 1942, § 9769] nor Code 1942, § 9770 have such a mandatory and self-executing effect as to require an assessor to examine every deed of record in his county to ascertain every particular separate right in real estate and the owner thereof at the risk of there being no assessment of separate estates in land owned by a person other than the owner of the surface rights. Stern v. Parker, 200 Miss. 27, 25 So. 2d 787

(1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

An oil or gas lease with right of entry is an estate in land subject to ad valorem taxation, but not including the oil or gas as a separate item of valuation. Gulf Ref. Co. v. Stone, 197 Miss. 713, 21 So. 2d 19 (1945); Smith County Oil Co. v. Board of Supvrs., 200 Miss. 18, 25 So. 2d 457 (1946), suggestion of error overruled on other grounds, 200 Miss. 26, 26 So. 2d 685 (1946), overruled on other grounds, Bailey v. Federal Land Bank, 206 Miss. 354, 40 So. 2d 173 (1949).

Under conflicting evidence, the question whether certain lands were properly classed and assessed as "uncultivable" was for the jury. State ex rel. Smith v. Tallahala Lumber Co., 8 So. 2d 230 (Miss. 1942).

"Fair and proper legal assessment" is such as places the value of the property on a fair, equal and uniform basis with other property of like character and value throughout the city and state. Edward Hines Yellow Pine Trustees v. Knox, 144 Miss. 560, 108 So. 907 (1926).

Where an assessment was made by a board of supervisors in violation of the law, the court could compel a reassessment in conformity with the equality and uniformity clause of Const. 1890 § 112. Darnell v. Johnston, 109 Miss. 570, 68 So. 780 (1915).

An assessment of vendor's lien notes and the real estate for which the notes were given is not double taxation. Adams v. Kuykendall, 83 Miss. 571, 35 So. 830 (1904).

2. Valuation.

Under the "current use" requirement for determining the true value of property for ad valorem taxation purposes, the concept of the "highest and best use" of the land is not applicable. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 (Miss. 1989).

The intricate details of proper valuation of property and specialized knowledge as to geographic, economic, and social facts and their significance to value has warranted the courts in recognizing the use of expert testimony for valuation of real property, for consideration by the jury along with all the evidence of the case. McArdle's Estate v. City of Jackson, 215 Miss. 571, 61 So. 2d 400 (1952).

Assessment of property by a separate and independent governmental subdivision such as a county, would not be of any probative worth upon the true market value in an action attacking validity of city tax assessment. McArdle's Estate v. City of Jackson, 215 Miss. 571, 61 So. 2d 400 (1952).

In an appeal from the assessing authorities it is competent for the property owner to testify as to the price of the property, or its value which the property owner would be willing to accept should he wish to sell, and which a buyer, ready and able to buy, would find reasonable, since the statute, for assessing purposes, requires the owner to value his property on this basis, although the testimony of the owner in such matters is not conclusive. City of Clarksdale v. Stuart, 184 Miss. 179, 185 So. 588 (1939).

This section [Code 1942, § 9769] authorized evidence, and an instruction, to the effect that the value of property as a basis for municipal taxes would be the price which the owner would accept and would expect to receive from any person willing and able to buy, if the owner was disposed to sell the property. City of Clarksdale v. Fitzhugh, 184 Miss. 174, 185 So. 587 (1939).

The valuation is not the assessment, but only its most important element. Adams v. Lamb-Fish Lumber Co., 104 Miss. 48, 61 So. 6 (1913).

3. —Particular elements of valuation.

The value of any federal subsidy or benefit enjoyed by a taxpayer by reason of its ownership of certain property had to be considered in establishing the true value of the property for each year in which such subsidy or benefits were in fact enjoyed. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 (Miss. 1989).

While income for rental value of real property is one proper element for consideration in determining its value, this factor is not the sole criterion, and all other relevant facts should be considered in determining the valuation. McArdle's Estate v. City of Jackson, 215 Miss. 571, 61 So. 2d 400 (1952).

In an action attacking the validity of the tax assessments, the tax assessors may consider the most profitable form of improvements upon the land as one of the several elements affixing its proper valuation, as well as its availability for other purposes, hence the testimony of real estate appraiser that the property was not being placed in its most profitable and efficient use was admissible. McArdle's Estate v. City of Jackson, 215 Miss. 571, 61 So. 2d 400 (1952).

4. Assessment of timber on lands.

Assessment of land given in for assessment without assessment of timber thereon held adjudication by board of supervisors that there was no timber on land, or that timber thereon was of no value, so as to preclude assessment of timber for back taxes. Gully v. J.J. Newman Lumber Co., 176 Miss. 60, 168 So. 258 (1936).

Statute relating to assessment of lands for taxation held to require separate assessment of timber on land given in for assessment, as against contention that requirement of separate assessment referred only to assessment by sheriff on land not given in by owner, in view of subsequent statutory requirement of separate assessment of land and improvements in separate ownership. Gully v. J.J. Newman Lumber Co., 176 Miss. 60, 168 So. 258 (1936).

On appeal of tax assessment, court, in approving assessment, should have set aside order of board of supervisors assessing property in so far as it fixed amount and value of timber which was different from that agreed upon by parties at trial, and should have entered order fixing amount and value of timber according to agreement of parties. Gully v. J.J. Newman Lumber Co., 176 Miss. 60, 168 So. 258 (1936).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 27-35-49 requires assessor to assess all county lands according to true value in proportion thereto, "taking into consideration improvements thereon"; man-made underground salt dome storage facilities constitute improvements which must be taken into consideration when determining true value of property as required by Miss. Code Section 27-35-49. Martin, May 6, 1993, A.G. Op. #93-0328.

Timberlands fall in category of uncultivatable agricultural lands for assessment purposes and true value must be determined in manner consistent with Section 27-35-50. Bridges, Feb. 9, 1994, A.G. Op. #94-0011.

It is the duty of every person owning or being in possession of land to deliver to the tax assessor each year no later than April 1st a list of all lands owned by that person showing the total number of acres, the total number of acreage of cultivatable lands and the number of acres devoted to agricultural purposes. Goff, May 15, 1998, A.G. Op. #98-0215.

A property owner does have the duty to apply each year for an agricultural use classification by April 1; however, if he does not do so, the tax assessor is nevertheless still required to assess the land properly. Yancey, July 17, 1998, A.G. Op. #98-0362.

A county board of supervisors does not have the authority to contract away the duties of the tax assessor; however, it is within the authority of the board of supervisors to survey, map, and appraise the property in the county. Barber, Oct. 5, 2001, A.G. Op. #01-0631.

RESEARCH REFERENCES

ALR. Judicial notice as to assessed valuations. 42 A.L.R.3d 1439.

Requirement of full-value real property taxation assessments. 42 A.L.R.4th 676.

Property taxation of residential time-share or interval-ownership units. 80 A.L.R.4th 950.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 673 et seq.

CJS. 84 C.J.S., Taxation §§ 554-566 et seq.

§ 27-35-50. Determination of true value for purposes of assessment.

(1) True value shall mean and include, but shall not be limited to, market value, cash value, actual cash value, proper value and value for the purposes of appraisal for ad valorem taxation.

(2) With respect to each and every parcel of property subject to assessment, the tax assessor shall, in ascertaining true value, consider whenever possible the income capitalization approach to value, the cost approach to value and the market data approach to value, as such approaches are determined by the Department of Revenue. For differing types of categories of property, differing approaches may be appropriate. The choice of the particular valuation approach or approaches to be used should be made by the assessor upon a consideration of the category or nature of the property, the approaches to value for which the highest quality data is available, and the current use of the property.

(3) Except as otherwise provided in subsection (4) of this section, in determining the true value of land and improvements thereon, factors to be taken into consideration are the proximity to navigation; to a highway; to a railroad; to a city, town, village or road; and any other circumstances that tend to affect its value, and not what it might bring at a forced sale but what the owner would be willing to accept and would expect to receive for it if he were disposed to sell it to another able and willing to buy.

(4)(a) In arriving at the true value of all Class I and Class II property and improvements, the appraisal shall be made according to current use, regardless of location.

(b) In arriving at the true value of any land used for agricultural purposes, the appraisal shall be made according to its use on January 1 of each year, regardless of its location; in making the appraisal, the assessor shall use soil types, productivity and other criteria set forth in the land appraisal manuals of the Department of Revenue, which criteria shall include, but not be limited to, an income capitalization approach with a capitalization rate of not less than ten percent (10%) and a moving average of not more than ten (10) years. However, for the year 1990, the moving average shall not be more than five (5) years; for the year 1991, not more than six (6) years; for the year 1992, not more than seven (7) years; for the year 1993, not more than eight (8) years; and for the year 1994, not more than nine (9) years; and for the year 1990, the variation up or down from the previous year shall not exceed twenty percent (20%) and thereafter, the variation, up or down, from a previous year shall not exceed ten percent (10%) through the year 2018; and for the year 2019 and thereafter, the variation, up or down, from a previous year shall not exceed four percent (4%). The land shall be deemed to be used for agricultural purposes when it is devoted to the commercial production of crops and other commercial products of the soil, including, but not limited to, the production of fruits and timber or the raising of livestock and poultry; however, enrollment in the federal Conservation Reserve Program or in any other United States Department of Agriculture conservation program shall not preclude land being deemed to be used for agricultural purposes solely on the ground that the land is not being devoted to the production of commercial products of the soil, and income derived from participation in the federal program may be used in combination with other relevant criteria to determine the true value of such land. The true value of aquaculture shall be determined in the same manner as that used to determine the true value of row crops.

(c) In determining the true value based upon current use, no consideration shall be taken of the prospective value such property might have if it were put to some other possible use.

(d) In arriving at the true value of affordable rental housing, the assessor shall use the appraisal procedure set forth in land appraisal manuals of the Department of Revenue. Such procedure shall prescribe that the appraisal shall be made according to actual net operating income attributable to the property, capitalized at a market value capitalization rate prescribed by the Department of Revenue that reflects the prevailing cost of capital for commercial real estate in the geographical market in which the affordable rental housing is located adjusted for the enhanced risk that any recorded land use regulation places on the net operating income from the property. The owner of affordable rental housing shall provide to the county tax assessor on or before April 1 of each year, an accurate statement of the actual net operating income attributable to the property for the immediately preceding year prepared in accordance with generally acceptable accounting principles. As used in this paragraph:

(i) "Affordable rental housing" means residential housing consisting of one or more rental units, the construction and/or rental of which is subject to Section 42 of the Internal Revenue Code (26 USC 42), the Home Investment Partnership Program under the Cranston-Gonzalez National Affordable Housing Act (42 USC 12741 et seq.), the Federal Home Loan Banks Affordable Housing Program established pursuant to the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) of 1989 (Public Law 101-73), or any other federal, state or similar program intended to provide affordable housing to persons of low or moderate income and the occupancy and maximum rental rates of such housing are restricted based on the income of the persons occupying such housing.

(ii) "Land use regulation" means a restriction imposed by an extended low-income housing agreement or other covenant recorded in the applicable land records or by applicable law or regulation restricting the maximum income of residents and/or the maximum rental rate in the affordable rental housing.

(e) In arriving at the true value of ground leases on real property leased by the Mississippi State Port at Gulfport, the assessor shall use the appraisal procedure set forth in land appraisal manuals of the Department of Revenue. Such procedure shall prescribe that the appraisal shall be made according to actual net ground rent attributable to the leased premises, capitalized at a market value capitalization rate prescribed by the Department of Revenue that reflects the prevailing cost of capital of commercial real estate in the geographical market in which the Mississippi State Port at Gulfport is located. As used in this paragraph (e):

(i) "Ground leases" means those leases of land where the Mississippi State Port at Gulfport is the landlord and a person or business entity is the tenant.

(ii) "Ground rent" means the rent paid to the Mississippi State Port at Gulfport in a set amount for a specific length of tenancy where the amount of rent may be adjusted from time to time based upon market indices, such as the consumer price index. Ground rent does not include percentage rent and rent based on improvements or any other type of rental payment.

(iii) "Percentage rent" means the rent paid to the Mississippi State Port at Gulfport that is calculated based upon revenue generated by the tenant by virtue of the ground lease.

(iv) "Rent based on improvements" means the rent paid to the Mississippi State Port at Gulfport that is calculated based upon investments in improvements to the leased premises made by tenant.

(5) The true value of each class of property shall be determined annually.

(6) The Department of Revenue shall have the power to adopt, amend or repeal such rules or regulations in a manner consistent with the Constitution of the State of Mississippi to implement the duties assigned to the department in this section.

SOURCES: Laws, 1980, ch. 505, § 9; Laws, 1983, ch. 471, § 9; Laws, 1986, ch. 447; Laws, 1987, ch. 507, § 3; Laws, 1990, ch. 560, § 1; Laws, 1998, ch. 454, § 2; Laws, 2002, ch. 489, § 1; Laws, 2005, ch. 480, § 1; Laws, 2017, ch. 422, § 1, eff from and after July 1, 2017.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the Sources line. The language "Laws, 1983, ch. 471, § 9;" was inserted preceding "Laws, 1986." The Joint Committee ratified the correction at its June 3, 2003, meeting.

Editor's Note — Laws of 2005, ch. 480, § 2 provides as follows:

"SECTION 2. This act shall be considered declaratory of existing policy on assessment of real property used for affordable rental housing under Section 112, Mississippi Constitution of 1890."

Amendment Notes — The 2017 amendment substituted "Department of Revenue" and "department" for "State Tax Commission" and "commission" throughout the section; added "through the year 2018; and for the year 2019 and thereafter, the variation, up or down, from a previous year shall not exceed four percent (4%)" at the end of the second sentence of (4)(b); inserted "of" near the end of (4)(d)(ii); and added (4)(e).

Cross References — Preparation of the land roll by the assessor, see § 27-35-55.

JUDICIAL DECISIONS

1. In general.

Circuit court properly granted summary judgment to a county board of supervisors and denied the leaseholders' request for a declaratory judgment because the leaseholders did not timely lodge an objection to a spike in their ad valorem taxes with the board or present sufficient evidence to establish that they leased the land for agricultural purposes, none of their 2010 assessments varied more than 10 percent from the previous year, and the court order that they cited did not apply to them. Darden v. Bd. of Supervisors, 169 So. 3d 913 (Miss. Ct. App. 2014).

Legislature did not violate Miss. Const. art. 4, § 112 when it enacted subsection (4)(d) because § 112 explicitly allows the Legislature to adopt laws that dictate how true value is to be determined. Willow Bend Estates, LLC v. Humphreys County Bd. of Supervisors, 166 So. 3d 494 (Miss. 2013).

Trial court erred in finding that subsection (4)(d) did not preclude a county from including tax credits in the valuation of privately owned housing complexes that were built in part using capital created by federal tax credits under the Low-Income Housing Tax Credit Program because the properties, in terms of value, were not similarly situated to ordinary private complexes; the Legislature properly exercised its prerogative in limiting the valuation method for such properties. Willow Bend Estates, LLC v. Humphreys County Bd. of Supervisors, 166 So. 3d 494 (Miss. 2013).

Because the statute is not ambiguous, it is both unnecessary and improper to attempt to divine the intent of the Legislature from three lines of deleted language. Willow Bend Estates, LLC v. Humphreys County Bd. of Supervisors, 166 So. 3d 494 (Miss. 2013).

Taxpayer's property was devoted for agricultural purposes and, thus, qualified as agricultural use property for tax purposes, even though property was not actually planted in timber or prepared for planting prior to January first of tax year, where property had previously qualified as agricultural property and taxpayer took steps to prepare property for commercial timber production prior to January first of tax year and planted property by April first of tax year. Madison County ex rel. Madison County Bd. of Supvrs. v. Lenoir, 695 So. 2d 596 (Miss. 1997).

In determining whether property qualifies for agricultural use valuation for tax purposes, taxing authorities should look to factors other than current state of soil as of January first of tax year, but should look to common-sensical considerations which would indicate whether property is in fact devoted to agricultural use, including, but not limited to, nature of property and of owner. Madison County ex rel. Madison County Bd. of Supvrs. v. Lenoir, 695 So. 2d 596 (Miss. 1997).

In determining whether property qualifies for agricultural use valuation for tax purposes, court should give closer scrutiny to vacant urban lot which is owned by commercial developer, is listed for sale and has never been used for agricultural purposes than to property owned by person whose family used it for agricultural purposes for many years. Madison County ex rel. Madison County Bd. of Supvrs. v. Lenoir, 695 So. 2d 596 (Miss. 1997).

Although property need not be actually planted by January first of tax year to qualify as agricultural use property for tax purposes, property should not be used for nonagricultural purpose as of January first of tax year as statute requires that property be devoted to commercial production of crops and commercial products of soil, implying that property is being set aside for agricultural use. Madison County ex rel. Madison County Bd. of Supvrs. v. Lenoir, 695 So. 2d 596 (Miss. 1997).

Taxpayer's property was improperly classified as residential land based on its location in area zoned for residential use, rather than as agricultural land, where land was never used for residential purposes, land was used for agricultural purposes when city zoned it as residential, and land was used strictly for growing pine trees at time taxpayer sought reclassification of land. Riley v. Jefferson Davis County, 669 So. 2d 748 (Miss. 1996).

Whether land is residential or agricultural, both values are determined according to land's current use. Riley v. Jefferson Davis County, 669 So. 2d 748 (Miss. 1996).

Mere zoning laws will not change use of property in classifying it for property tax purposes. Riley v. Jefferson Davis County, 669 So. 2d 748 (Miss. 1996).

Irrebuttable presumption that taxpayer's property was used for nonagricultural purposes based solely upon fact that subdivision plat had been recorded, rather than upon present use of property, denied taxpayer constitutional right to equal protection of law. Riley v. Jefferson Davis County, 669 So. 2d 748 (Miss. 1996).

Property valuation may consider the gross income generated by the property as an indicator of value. It is not, therefore, a constitutional violation to value differently otherwise identical property if the disparate values result from disparate revenue-generating capabilities. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 (Miss. 1989).

The three statutorily-authorized approaches to property value-the cost approach, the income capitalization approach and the market data or comparative sales approach-do not, considered singly, establish value. Rather, each is one approach to value, with the appraiser's estimate of value being, in the end, an opinion which is the product of a reconciliation of the indications yielded by the three approaches. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 (Miss. 1989).

Under the "current use" requirement for determining the true value of property for ad valorem taxation purposes, the concept of the "highest and best use" of the land is not applicable. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 (Miss. 1989).

The value of any federal subsidy or benefit enjoyed by a taxpayer by reason of its ownership of certain property had to be considered in establishing the true value of the property for each year in which such subsidy or benefits were in fact enjoyed. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 (Miss. 1989).

The constitutional requirement of uniformity and equality in taxation is satisfied when, in establishing the true value of property, the public assessor considers all factors affecting the value of the property and employs the same assessment ratio as is applied to other like properties. Thus, where the assessor considered the amount of federal subsidies received by a taxpayer as the owner of the property, § 112 of the Mississippi Constitution and the Equal Protection Clause of the United States Constitution afforded the taxpayers no right to relief absent a showing that other federally subsidized housing projects were treated differently or that the assessor did not consider all factors affecting value. Rebelwood, Ltd. v. Hinds County, 544 So. 2d 1356 (Miss. 1989).

ATTORNEY GENERAL OPINIONS

Regarding valuation of facilities for which law requires back assessment of property that has escaped taxation for seven years from the date when right to tax first accrued, Miss. Code Section 27-35-50 provides proper method to determine value for purposes of assessment. Martin, May 6, 1993, A.G. Op. #93-0328.

In case of land used for agricultural purposes, including catfish farms, the assessor, in making appraisal, shall use soil types, productivity and other criteria set forth in land appraisal manuals of State Tax Commission, which shall include but not be limited to income capitalization approach to value. Stewart Aug. 24, 1993, A.G. Op. #93-0472.

Timberlands fall in category of uncultivatable agricultural lands for assessment purposes and true value must be determined in manner consistent with Section 27-35-50. Bridges, Feb. 9, 1994, A.G. Op. #94-0011.

Agricultural land is "devoted to the commercial production of crops" that are intended to be sold for profit and are not merely for personal use. Goff, March 27, 1998, A.G. Op. #98-0136.

The provisions of Section 25-61-9 with regard to disclosure of confidential financial information could be applicable to the statements of actual net operating income filed by owners of rental housing. Slay, Aug. 18, 2006, A.G. Op. #06-0394.

RESEARCH REFERENCES

ALR. Property taxation of residential time-share or interval-ownership units. 80 A.L.R.4th 950.

§ 27-35-51. Buildings, minerals, etc., separately owned; agreements in connection with financing, design, construction, acquisition, maintenance and/or operation of toll road or toll bridge project.

(1) Except as otherwise provided in subsection (2) of this section, whenever any buildings, improvements or structures, mineral, gas, oil, timber or similar interests in real estate, including building permits or reservations, are owned separately and apart from and independently of the rights and interests owned in the surface of such real estate, or when any person reserves any right or interest, or has any leasehold in the elements above enumerated, all of such interests shall be assessed and taxed separately from such surface rights and interests in said real estate, and shall be sold for taxes in the same manner and with the same effect as other interests in real estate are sold for taxes. All interests in real estate herein enumerated shall be returned to the tax assessor within the same time and in the same manner as the owners of land are now required by law to list lands for assessment and taxation and under like penalties. The tax assessor shall enter the assessment of the interests herein enumerated upon the assessment roll by entering the same upon the next succeeding line or lines of the roll following the assessment of the surface owner, the name of the owner and the name of the interest, and by placing the value in the appropriate column or columns on the roll; or the assessor may enter the assessment of any or all of such interests upon a page or pages in the land roll following the assessment of the lands of the county, and the value of all such interests shall be included in the recapitulation of the roll. And the value of said interest or interests shall be determined and fixed in the same manner and by the same officials now required by law to value and assess property for taxation.

(2) Pursuant to Section 65-43-3(2)(i), any contract entered into under Section 65-43-3 by a governmental entity, as defined in Section 65-43-1, with a company as defined in Section 65-43-3(1), involving a franchise, license agreement, concession agreement, operating agreement, construction agreement, design agreement and/or any other similar contractual arrangement in connection with the financing, design, construction, acquisition, maintenance and/or operation of a toll road or toll bridge project pursuant to Section 65-43-3, shall not constitute any right, title or interest in land or other real property or real estate or in personal property separate and apart and independent of the rights and interests of the governmental entity for purposes of subsection (1) of this section, in the toll road or toll bridge project, including tollbooths and related toll facilities, including, but not limited to, land, pavement, drainage-related structures, and other infrastructure and property related thereto in

which a governmental entity is the title owner of such property and/or holder of easements, rights-of-way and/or other interests for such toll road or toll bridge project.

SOURCES: Codes, 1930 § 3146; 1942, § 9770; Laws, 1930, ch. 171; Laws, 1932, ch. 185; Laws, 2008, 1st Ex Sess, ch. 44, § 4, eff from and after passage (approved June 2, 2008.)

Cross References — Exemption of nonproducing gas, oil, and mineral interests, see § 27-31-71 et seq.

Taxpayer's duty to list taxable property, see § 27-35-23.

Sale to state for nonpayment of taxes on timber, separately assessed, see §§ 29-1-53, 29-1-55.

Authority of Transportation Commission, counties and municipalities to contract with companies for financing, constructing, operating or maintaining toll roads or toll bridges, see § 65-43-3.

JUDICIAL DECISIONS

1. In general.
2. Separate assessments of particular mineral interests.
3. Separate assessment of timber on land.
4. Effect of payment of land taxes.
5. Tax sales.

1. In general.

Legislature has right to establish different method of assessment for interests in real estate owned separately from surface right, as was done under this section [Code 1942, § 9770], so long as law applies equally on all within class and is not discriminatory against others occupying like position. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

The purpose of legislature in enacting this section [Code 1942, § 9770] was to allow assessment of separate interests in property mentioned to be so made as to relieve owners of such interest of any concern or responsibility as to any other interests in described land. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

This section [Code 1942, § 9770] does not deal with same subject matter as Code of 1942, § 9772, containing provision that if more than one person shall claim to be owner of same tract of land assessor shall so state in his assessment roll, and is not controlled by Code 1942, § 9772 or in pari materia with it, although it may be dependent upon Code 1942, § 9772 for a part of the plan of assessment or collection. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

Neither this section [Code 1942, § 9770] nor Code 1942, § 9769 has such a mandatory and self-executing effect as to require an assessor to examine every deed of record in his county to ascertain every particular separate right in real estate and the owner thereof at the risk of there being no assessment of separate estates in land owned by a person other than the owner of the surface rights. Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

2. Separate assessments of particular mineral interests.

Assessment of land to landowner and his payment of taxes thereon, without minerals having been excepted from such assessment, does not have effect of constituting payment of taxes on separately owned minerals so as to preclude back assessment of taxes against mineral owner to extent of mineral interest separately owned. Bailey v. Federal Land Bank, 207 Miss. 764, 43 So. 2d 375 (1949).

Assessment by county tax assessor of owner of half interest in minerals in place, which was under lease, for one-half of minerals in, on and under land was proper assessment, and substitution on appeal to circuit court of assessment of one-sixteenth mineral interest or one-sixteenth royalty under lease is erroneous. Bailey v. Federal Land Bank, 207 Miss. 764, 43 So. 2d 375 (1949).

Assessment of minerals by county tax assessor on uniform valuation throughout county of $1.00 per mineral acre, whether under lease or not, is prima facie correct. Bailey v. Federal Land Bank, 207 Miss. 764, 43 So. 2d 375 (1949).

Producing oil royalty interests are legally assessable for ad valorem taxes. State v. Cummings, 206 Miss. 630, 40 So. 2d 587 (1949).

Under this section [Code 1942, § 9770] every separately owned mineral interest in land is subject to separate assessment, and the fact that a lease thereon is subject to separate assessment under this section [Code 1942, § 9770] does not relieve the separately owned mineral interest from liability to such assessment. Bailey v. Federal Land Bank, 206 Miss. 354, 40 So. 2d 173 (1949).

The royalty interest reserved in the lessor in an oil and gas lease is subject to ad valorem taxation; the interest of the lessee is not to be assessed upon the entire mineral value of the land but only upon the value of the leasehold interest. Bailey v. Federal Land Bank, 206 Miss. 354, 40 So. 2d 173 (1949).

Decision overruling former decision so as to declare tax liability of owner-lessor of mineral interest as well as tax liability of lessee's interest therein will be made retroactive to the extent of owner-lessor's liability for taxes, interest and costs but not as to penalties in view of the fact that owner-lessor acted in good faith and in full reliance upon the former erroneous decision in withdrawing his assessment on separately owned mineral rights under lease. Bailey v. Federal Land Bank, 206 Miss. 354, 40 So. 2d 173 (1949).

This section [Code 1942, § 9770] permits and requires separate assessment of undivided fractional interests in oil and gas in place to each separate owner of such fractional undivided interests, insofar as not exempted by Laws 1944, ch. 134 (see Code 1942, § 9417-12), providing for certain ad valorem tax exemptions on or under mineral producing properties. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

Provision of Code 1942, § 9772, that tax collector shall only collect taxes on one assessment applies to sales under this section [Code 1942, § 9770] without making it ambiguous and uncertain, for when each undivided fractional interest is separately assessed to its owner it follows that collector only collects taxes on one assessment. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

Taxpayer who has caused minerals to be assessed to himself by collector separately from surface is not required to appear before board of supervisors and insist that board enter order approving assessment made by collector when it appears that board of supervisors would not assess minerals separately from surface and that taxpayer followed general method adopted throughout county in assessing minerals. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Taxpayer who has caused minerals to be separately assessed to himself by collector is not required to institute mandamus proceedings against the supervisors to compel them to enter order approving assessment as made by collector, when taxpayer has information that board of supervisors would not assess minerals separately from surface of land. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Under Code 1942, § 9901, collector has authority to assess minerals which assessor has refused to assess separately from surface of land, and, as manner of making assessment is not prescribed by statute, assessment by making notation "M. R.," understood to mean mineral rights by collector, on roll on line where land was listed for taxes is not invalid method of assessment. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Where provision in deed reserved an interest in the minerals, etc. in the described lands, and thus created two estates therein, the surface, and the oils, minerals and clay, with right of entry, both estates were subject to assessment, separately, or as a unit. Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

Where a deed provision reserved in the grantors, their heirs and assigns a one-half interest in all deposits of clay, oil and minerals, with right of entry, the estate so reserved was subject to ad valorem taxation. Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

An oil or gas lease with right of entry is an estate in land, subject to ad valorem taxation, but not including the oil or gas as a separate item of valuation. Gulf Ref. Co. v. Stone, 197 Miss. 713, 21 So. 2d 19 (1945); Smith County Oil Co. v. Board of Supvrs., 200 Miss. 18, 25 So. 2d 457 (1946), suggestion of error overruled on other grounds, 200 Miss. 26, 26 So. 2d 685 (1946), overruled on other grounds, Bailey v. Federal Land Bank, 206 Miss. 354, 40 So. 2d 173 (1949).

3. Separate assessment of timber on land.

Statute relating to assessment of lands for taxation held to require separate assessment of timber on land given in for assessment, as against contention that requirement of separate assessment referred only to assessment by sheriff on land not given in by owner, in view of subsequent statutory requirement of separate assessment of land and improvements in separate ownership. Gully v. J.J. Newman Lumber Co., 176 Miss. 60, 168 So. 258 (1936).

4. Effect of payment of land taxes.

The separate assessment of mineral interests in land creates a distinct taxable interest, and the payment of land taxes is not a double assessment or a payment of the taxes assessed against the mineral interests. Shaner v. Mississippi State Tax Comm'n, 210 So. 2d 883 (Miss. 1968).

Taxes paid on assessment of surface of land by owner who resided thereon and who had executed oil and gas lease reserving his mineral rights did not cover tax on separately assessed royalty interest in producing property so as to entitle him to refund of tax paid on assessment of royalty interest. State v. Cummings, 206 Miss. 630, 40 So. 2d 587 (1949).

5. Tax sales.

An easement appurtenant is not extinguished by a tax sale. See Engel v. Catucci, 91 U.S. App. D.C. 54, 197 F.2d 597, 599 (D.C. Cir. 1952). Hearn v. Autumn Woods Office Park Prop. Owners Ass'n, 757 So. 2d 155 (Miss. 1999).

Tax sale purporting to convey entire property does not convey to tax purchaser minerals in the land separately owned and separately assessed by tax collector, when the tax roll in hands of collector showed the separate assessment, and the roll, as well as copies of tax receipts, disclosed fact that taxes on minerals for two years before sale had actually been paid. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Sale of lands to the state for taxes carries with it the minerals therein notwithstanding that the minerals were owned by third persons and should have been separately assessed. Pettis v. Brown, 203 Miss. 292, 33 So. 2d 809 (1948).

Assessment of lands in their entirety, without exception or reservation, and not divided into separate tracts assessed to separate owners, was subject to tax sale as an entirety, notwithstanding that there had been a prior reservation by deed of mineral interests therein, the owners of the latter being under a duty to see that their estate was assessed and taxed correctly. Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

Where assessment was upon certain lands in their entirety, without recognition of the fact that certain mineral interests therein had been reserved by deed to persons other than the record owner, and lands were sold at tax sale, the fact that the tax assessor did not assess the subsurface estate of defendants was not available to them to defeat the claims of holder of the tax title. Stern v. Parker, 200 Miss.

27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

ATTORNEY GENERAL OPINIONS

A leasehold interest in county owned real property must be placed on the assessment rolls of the county and taxed pursuant to this section. Haque, February 19, 1999, A.G. Op. #99-0082.

In situations wherein a municipality owns property that is leased to an industry, the ownership interests of the municipality must be listed and assessed upon the land rolls and the leasehold interests of the industry must also be listed and assessed upon the land rolls, the leasehold interest to be entered upon the rolls immediately following the ownership interest; the fact that the ownership interest of the municipality, if used for a proper municipal purpose, may be exempt from ad valorem taxation pursuant to Section 27-31-1(b) does not prohibit the tax assessor from entering the property upon the land rolls under the name of the municipality as owner thereof. Tucker, Feb. 4, 2000, A.G. Op. #2000-0023.

Ad valorem taxes on the leasehold interest of a clinic used and occupied by the private physicians may not be exempted. Webb, Dec. 22, 2006, A.G. Op. #06-0629.

RESEARCH REFERENCES

Am Jur. 52 Am. Jur. 2d, Logs and Timber § 51 et seq.

72 Am. Jur. 2d, State and Local Taxation § 662 et seq.

CJS. 84 C.J.S., Taxation §§ 554-566.

§ 27-35-53. How lands not rendered assessed; all lands to be accounted for.

It shall be the duty of the tax assessor in each county to assess the lands in the county. Lands not rendered, or returned shall be assessed by him as provided in Section 27-35-51. It shall be the duty of the board of supervisors to furnish the tax assessor with all necessary maps, or plats, of the county, and of every portion thereof, including municipalities, and every survey, subdivision or addition thereto, and of every school district, road district or other separate taxing districts. Such maps or plats shall be uniform in size, drawn to scale, and shall show clearly the location of all tracts of lands in the county and every portion thereof, and shall show the boundaries of every supervisor's district, road district, school district, or other taxing district, and of every municipality, and of every survey, subdivision, or addition, and of all separate, adjacent, annexed territory, added to any separate school district. The tax assessor shall compare his rolls with such maps and see that the whole of his county is assessed.

SOURCES: Codes, 1892, § 3773; 1906, § 4282; Hemingway's 1917, § 6916; 1930, § 3147; 1942, § 9771; Laws, 1928, Ex ch. 58.

Cross References — County ad valorem tax levy for payment of bonds or notes and for other authorized purposes, see § 27-39-329.

ATTORNEY GENERAL OPINIONS

A county board of supervisors does not have the authority to contract away the duties of the tax assessor; however, it is within the authority of the board of supervisors to survey, map, and appraise the property in the county. Barber, Oct. 5, 2001, A.G. Op. #01-0631.

Pursuant to the duty imposed by § 27-35-53, the board of supervisors must provide the tax assessor a complete original set of all current county tax maps. Barber, Oct. 4, 2002, A.G. Op. #02-0341.

§ 27-35-55. How land roll made up.

In preparing the land roll the assessor shall first list all property lying outside incorporated towns and cities, and then list all property lying within incorporated towns and cities. The assessor shall list all rural and suburban property in strict numerical sequence beginning with the lowest parcel identification number as established under State Tax Commission rules and regulations and continue in consecutive numerical order until all rural and suburban property outside incorporated towns and cities has been listed. The assessor shall then commence with the incorporated town or city falling first in alphabetical order, and list all property within said town or city in strict numerical order by parcel identification number until all property within said town or city has been listed. The assessor shall continue with each incorporated town or city in alphabetical order, listing each town or city in the prescribed numerical order until all incorporated towns and cities have been listed.

Beginning with the land roll compiled during a county's first update year, as set by the State Tax Commission under Section 27-35-50, the assessor shall include in parenthesis, immediately following said parcel identification number, the land use code of each and every parcel as determined by the State Tax Commission rules and regulations.

The assessor shall also provide a complete listing in strict alphabetical order of all property owners within the rural and suburban areas of his county as well as a separate listing in strict alphabetical order of all property owners in each incorporated town or city. This alphabetical listing shall show the name or names of ownership and the parcel number or numbers of each parcel owned within each jurisdiction and the page number upon which entry appears in the regular land roll. If more than one (1) person shall claim to be the owner of the same tract or parcel of land, the assessor shall so state in his assessment roll, and the tax collector shall only collect the taxes on one (1) assessment. Land of the state or of the United States, and other land exempted from taxation, shall be listed as other lands but without the value except as otherwise provided. If the owner of any lands be unknown, it shall be assessed to "unknown."

Lands assessed by the State Tax Commission shall be listed, but without value, on the rolls by the assessor for the purpose of completing the descriptions of all lands in the county, but for no other purpose.

The assessor shall show in separate columns on his roll in what road district, school district, or other separate taxing districts each parcel of land is located and subject to taxation, and where a parcel of land owned by one (1) person lies partly within and partly without any taxing district the assessment shall be divided and separately assessed so as to show the number of acres and the classification of the land in each separate district with the value thereof. Where a taxpayer renders a list of his lands and fails to show in what taxing districts or municipality the same is located and subject to taxation, the tax assessor shall enter the assessment in separate columns so as to show the assessment for the respective districts or municipality. He shall show the total of each and every column on his roll and carry the result thereof to the "Page of Pages" recapitulation; and he shall extend into the column for "Total" the amount of each separate assessment; and shall show in his recapitulation the total assessment of every taxing district, or municipality in his county.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art 17 (15); 1857, ch. 3, art 19; 1871, § 1676; 1880, § 490; 1892, § 3774; 1906, § 4283; Hemingway's 1917, § 6917; 1930, § 3148; 1942, § 9772; Laws, 1928, Ex ch. 58; Laws, 1986, ch. 388, eff from and after January 1, 198.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Department of Revenue, generally, see § 27-3-1 et seq.

Description of land, see § 27-35-61.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application, generally.
3. Sufficiency of description of property.

1. Validity.

State may adopt any method of assessing land for taxes so that reasonable notice and due process of law are afforded; statute providing for assessing land by government surveys or plan as shown in map and other descriptions sufficiently complied with due process; government survey of Spanish land grants in regular townships, sections, and ranges, noting them on map, authorizes state's use of such designations in assessment. Dimitry v. Jones, 149 Miss. 641, 115 So. 786 (1928).

2. Construction and application, generally.

In a suit to confirm tax title to land in city, assessed and sold to city and state for delinquent taxes, testimony of a person who had platted the subdivision that fence was the dividing line between a platted subdivision and land retained by the former owner as his home was inadmissible. Melvin v. Parker, 223 Miss. 430, 78 So. 2d 477 (1955).

This section [Code 1942, § 9772] is not in pari materia with and does not control Code 1942, § 9770, which deals with entirely new subject matter, not known at time of enactment of this section [Code 1942, § 9772], that is, assessment of interests in real estate owned separately from the surface. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

Provision of this section [Code 1942, § 9772] that tax collector shall only collect the taxes on one assessment applies to sales under Code 1942, § 9770, without making that section ambiguous and uncertain, for when each undivided fractional interest is separately assessed to its owner it follows that collector only collects taxes on one assessment. Hendrix v. Foote, 205 Miss. 1, 38 So. 2d 111 (1948), motion granted, 38 So. 2d 919 (Miss. 1949).

Properly described property may be assessed to unknown person or to person other than owner. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

Tax title based on assessment by government survey, otherwise valid, held to prevail over Spanish land grant claim; land held in private ownership is subject to state statutes on assessment; such land is also subject to state statutes on adverse possession. Dimitry v. Jones, 149 Miss. 641, 115 So. 786 (1928).

Where land and timber are both assessed to an unknown owner the purchaser at a tax sale of such land takes also title to the timber. Eureka Lumber Co. v. Terrell, 48 So. 628 (Miss. 1909).

A license to enter land and cut and remove products therefrom is not such an interest in the land as is taxable as real estate. Board of Supvrs. v. Imperial Naval Stores Co., 93 Miss. 822, 47 So. 177 (1908).

3. Sufficiency of description of property.

In suit to cancel tax sale, sale will not be set aside on ground that description upon assessment roll was insufficient to vest title in purchaser at tax sale where record on appeal contains no proof of description on assessment roll or in list of lands sold to state, no exhibits are attached to bill which purports to incorporate exhibits and record contains no proof of contents of exhibits. Wilkinson v. Steele, 207 Miss. 701, 43 So. 2d 110 (1949).

A description of lands in the tax assessment and tax deed as "Part of Hoggatt Tract, located in Adams County, assessed for taxes to Roxie Hill for 1931" was void. Thompson v. Wherry, 200 Miss. 672, 27 So. 2d 771 (1946).

Certainty beyond all doubt is not required of descriptions in assessment rolls, a description reasonably certain either within itself or which by the aid of pertinent statutes can be made reasonably certain being all that is required, so far as the description is concerned and when an owner whose land lies in a particular section finds that an assessment of land in that section has been made, he should, in view of the statute, reasonably expect to find there and in that group the assessment for every one of the owners in that section, including himself, and when he finds on the assessment roll the grouping, with the section, township, and range expressly stated or written out as a part of the first or opening item of that group, he has been thereby furnished a reasonably sufficient identification of his land, and one which should leave him in no real doubt as to what was thereby assessed. Miller v. Fulliwiley, 192 Miss. 846, 7 So. 2d 799 (1942).

Where, in the several columns of an assessment roll, and under the appropriate titles, were indicated on the first line of a group the name of the owner, description of the land, section, township and range, and on the immediately succeeding lines were listed the names of owners and description of other land in the same section, but the column entitled "section," "township," and "range" were left blank on such succeeding lines, and, when one section had been finished, two blank lines were skipped, and next occurred the listings for another section, the same system being followed, i.e., on the first line appeared the name of the owner, description of the land, section, township and range, and on the succeeding line appeared the names of the owners and description of land, with the column entitled section, township and range being left blank, and this system was followed throughout the entire assessment roll, and was in fact followed in most of the land assessment rolls of the state, an assessment against an owner, listed as the fifth item of the assessment for a certain section, in which his name and the description of the land were given, but in which the columns designating the section, township and range, which had been filled in in the first item, were left blank in the listing of his property, was valid, and the description was sufficient to support a sale for unpaid taxes. Miller v. Fulliwiley, 192 Miss. 846, 7 So. 2d 799 (1942).

Description of lands in tax assessment roll held not aided by name inserted in column marked "Name of owner." Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

Assessment of lands not described on tax assessment roll in manner enabling surveyor to locate lands therefrom nor in manner directed by statute permitting lands to be described by naming owner and occupant held void. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

"Due process" requires that, to create lien, tax assessment must describe property with certainty or contain data clearly leading to identification. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

Where lands were capable of identification from description in land assessment roll tax sale passed title. Talmadge v. Seward, 155 Miss. 580, 124 So. 791 (1929).

Description of land, embraced in Spanish grant, according to regular government survey into sections and subdivisions, held good descriptions for taxation purposes. Dimitry v. Lewis, 150 Miss. 818, 117 So. 265 (1928), appeal dismissed, 278 U.S. 570, 49 S. Ct. 81, 73 L. Ed. 511 (1928).

The assessment description of property as " ½, N. W. ¼, S. E. ¼, N. W. ¼" is a sufficient description. Moores v. Thomas, 95 Miss. 644, 48 So. 1025 (1909).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 653 et seq.

CJS. 84 C.J.S., Taxation § 662 et seq.

§ 27-35-57. Requirements directory.

A failure to observe the requirements of Section 27-35-55 shall not vitiate any assessment, if the land be so described as to be identified. It shall be sufficient identification of land to describe it as the land of ________ (the person owning or claiming it), occupied by ________; or that part of (section or other known division designating it) owned or claimed by ________; or the lot on which ________ resides; or the lot occupied by ________; or by the name by which it may be known; or by any description which will furnish a sure guide for the ascertainment by parol evidence of the particular land intended.

SOURCES: Codes, 1871, § 1676; 1880, § 490; 1892, § 3775; 1906, § 4284; Hemingway's 1917, § 6918; 1930, § 3149; 1942, § 9773.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application, generally.
3. Sufficiency of description of property.

1. Validity.

The legislature is authorized to provide what shall be a sufficient description of land in the assessment roll where such description points out with certainty the land assessed. Reed v. Heard, 97 Miss. 743, 53 So. 400 (1910).

2. Construction and application, generally.

"Due process" requires that, to create lien, tax assessment must describe property with certainty or contain data clearly leading to identification. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

If tax assessment roll describes lands as owned, occupied, or claimed by named person, parol evidence is admissible under statute in aid of description. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

Properly described property may be assessed to unknown person or to person other than owner. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

A sale of land for taxes under the description on the assessment roll, "owner's name unknown; division of § 39; township 16; range 4 east; twenty acres," is not invalidated by the fact that the original owner caused his land to be assessed as "lot 6, Collier's estate; § 37, T. 17, R. 4 E., thirteen acres," and paid the taxes on such assessment; the case is not within the saving clause of this section [Code 1942,

§ 9773]. Crawford v. McLauren, 83 Miss. 265, 35 So. 209 (1903), error overruled, 83 Miss. 278, 35 So. 949 (1904).

This section [Code 1942, § 9773] requires the clue to be found in the assessment roll itself, not in the pleadings. McQueen v. Bush, 76 Miss. 283, 24 So. 196 (1898).

The provision of the section that a failure to observe requirements shall not vitiate the assessment, does not affect the distinction between patent and latent ambiguities. Cogburn v. Hunt, 54 Miss. 675 (1877).

3. Sufficiency of description of property.

A description in a tax deed stating the land to be in a certain county, but containing no reference to city or town, no subdivision, section, township, or range, and not referring to the lot by any name in the description, although both the list and the deed stated the land to be assessed to a named party, was vague and indefinite. Calmes v. Weill, 243 So. 2d 408 (Miss. 1971).

Where tax assessment roll description which contained a patent error showing that the land in question was on one side of the street whereas the description placed it on the other side of the street and which sufficiently identified the property as a particular person's place, there was enough in the description on the assessment roll to be applied to a particular tract of land by the aid of extrinsic evidence. Stockstill v. Bennett, 215 Miss. 417, 61 So. 2d 154 (1952).

Assessment description of certain lands as "NW ¼ SW ¼, less 6 A, Section 2, Township 2, Range 18," although containing patent ambiguity by reason of the statement "less 6 A," did not render the tax sale to the state void because of indefinite description where the tax conveyance to the state contained a clue, which traced through the assessment rolls and the deeds of conveyance, ultimately led to a definite description of the excepted 6 acres, the assessment rolls and deeds of conveyance being admissible in evidence to clarify the ambiguity by virtue of Code 1942, § 9775. Jefferson v. Walker, 199 Miss. 705, 24 So. 2d 343 (1946), error overruled, 199 Miss. 725, 26 So. 2d 239 (1946).

Description of lands in tax assessment roll held not aided by name inserted in column marked "Name of owner." Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

Assessment of lands not described on tax assessment roll in manner enabling surveyor to locate lands therefrom nor in manner directed by statute permitting lands to be described by naming owner and occupant held void. Carr v. Barton, 173 Miss. 662, 162 So. 172 (1935).

Tax sale was effectual to pass title to lands described in assessment roll in reference to section in longitudinal divisions, not latitudinally as lands are usually described, but which descriptions easily describe the several parcels, so that the lands were capable of identification from the description in the assessment roll. Talmadge v. Seward, 155 Miss. 580, 124 So. 791 (1929).

A description of property by the initial letters with fraction of section or parts thereof in figures held to be sufficient. Moores v. Thomas, 95 Miss. 644, 48 So. 1025 (1909).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 635.

§ 27-35-59. What carried forward to last page.

The several columns on each page containing the number of acres, quantities, and values shall be carefully footed up at the bottom of each page, separately, and the sums from each page shall be carried forward to the last page, and the aggregate sums accurately added up and ascertained.

SOURCES: Codes, 1857, ch. 3, art 19; 1871, § 1676; 1880, § 492; 1892, § 3777; 1906, § 4286; Hemingway's 1917, § 6920; 1930, § 3150; 1942, § 9774.

§ 27-35-61. Description of land.

In assessing land, a description of it as a part of a designated tract or division, shall be held to embrace such part as is the subject of separate ownership, as one tract or division, whether owned by one or several jointly. When part of a designated tract or division shall be sold for taxes, the sale shall pass the title of such part as was the subject of such separate ownership when it was assessed. The sale of a specified number of acres of a tract containing more, or a specified portion of a tract, shall pass an undivided interest in the whole tract equal to the proportion which the number of acres or portion sold bears to the whole tract. When part of a known tract or division of land is assessed by a description which identifies it, any other part of it which is assessed but not so identified, shall be held to embrace all of such tract or division not included in the part identified. Parol testimony shall always be admissible to apply a description of land on the assessment roll, or in a conveyance for taxes, where such testimony will show what land was assessed and sold, and there is enough in the description on the roll or conveyance to be applied to a particular tract of land by the aid of such testimony.

SOURCES: Codes, 1880, § 491; 1892, § 3776; 1906, § 4285; Hemingway's 1917, § 6919; 1930, § 3151; 1942, § 9775.

Cross References — Directory nature of assessment roll requirements, see § 27-35-57.

Lists of lands sold at tax sales, see §§ 27-41-79, 27-41-81.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.
3. Sufficiency of description.
4. —Particular descriptions, sufficient.
5. —Particular descriptions, insufficient.
6. Admissibility of evidence as to description.
7. —Parol evidence.
8. —Unofficial or private plat.
9. —Record evidence.
10. Assessment of separate lots.
11. Assessment of railroad right of way.

1. Validity.

The legislature has the authority to provide what shall be a sufficient description of the land in the assessment roll thereof, provided, such description points out with certainty the land assessed. Reed v. Heard, 97 Miss. 743, 53 So. 400 (1910).

2. Construction and application.

In a tax sale proceeding, due process is not afforded a landowner if his lands are assessed by a void description, nor can land be conveyed except by a writing containing a description capable of being applied to a particular tract of land. Calmes v. Weill, 243 So. 2d 408 (Miss. 1971).

Subsequent sections in this chapter limiting the defenses that may be made to a tax deed presupposes that land has been validly assessed. Reed v. Heard, 97 Miss. 743, 53 So. 400 (1910).

A case in which a tax collector's deed was held to be void for a patent ambiguity in description in the assessment roll and tax collector's deed. Cassedy v. Hartman, 93 Miss. 94, 46 So. 536 (1908).

A tax deed containing a patent ambiguity in the description of the land sought to be conveyed is void and cannot be helped by this section [Code 1942, § 9775]. Smith v. Brothers, 86 Miss. 241, 38 So. 353 (1905).

3. Sufficiency of description.

The description on the assessment rolls is sufficient to locate particular land assessed and sold for delinquent taxes, when aided by other extrinsic evidence in the record including the official map of the tax assessor. Loper v. Hinds Land Co., 214 Miss. 644, 58 So. 2d 88 (1952), suggestion of error overruled, opinion modified, 214 Miss. 644, 59 So. 2d 326 (1952).

Description in tax deed reasonably certain, or which by aid of statute may be made reasonably certain, is sufficient. Tamburo v. Standard Oil Co., 164 Miss. 386, 145 So. 107 (1933).

In bill for cancellation of tax title, averments in complaint alleging, by a valid description, complainant's ownership of tract of land, and identifying land as the delinquent land assessed by ambiguous description, and so sold and conveyed for taxes and purchased by defendant, do not call for response in defendant's answer or the adduction of parol evidence to apply the description in the assessment roll and tax deed to the particular tract in question, even though the complainant used the words "pretended sale" in referring to the sale for taxes. Mixon v. Clevenger, 74 Miss. 67, 20 So. 148 (1896).

4. —Particular descriptions, sufficient.

Where tax assessment roll description which contained a patent error showing that the land in question was on one side of the street whereas the description placed it on the other side of the street and which sufficiently identified the property as a particular person's place, there was enough in the description on the assessment roll to be applied to a particular tract of land by the aid of extrinsic evidence. Stockstill v. Bennett, 215 Miss. 417, 61 So. 2d 154 (1952).

Assessment of certain lots on the assessment roll as being in Block 6 of Part 2 of the Belhaven Heights subdivision of the city of Jackson was sufficient, although the location of such lots had been changed on a corrected survey growing out of litigation to vacate and cancel the old plat, where the lots could be identified by the aid of a notation on the old plat referring to the litigation and to the corrected survey. Belhaven Heights Co. v. May, 187 Miss. 101, 192 So. 6 (1939).

Description in tax deed, "One Lot in Sec. 8, T. 14, R. 8, desc. in Bk 199 Page 53 Town of Glen Allen," assessed to named person held sufficient. Tamburo v. Standard Oil Co., 164 Miss. 386, 145 So. 107 (1933).

A description in the assessment and tax deed of lots giving their numbers and municipality in which they are located the owner's name and "in Moore's addition" is not ambiguous because of the omission of Moore's initials nor because there was another division known as "Moore's second addition to the town," which had lots of the same number. Martin v. Smith, 140 Miss. 168, 105 So. 494 (1925).

Under this section [Code 1942, § 9775], a description of land in a tax deed as the west part of a certain quarter section, "one hundred ten acres, more or less," is sufficient where there had been conveyed to another person fifty acres, the east part of the same quarter. Wheeler v. Lynch, 89 Miss. 157, 42 So. 538 (1906).

Where property assessed to one Dowling as "one lot and the buildings thereon, S. W. corner Franklin and Pine Streets," was sold and conveyed to the state under such description for delinquent taxes, and the state conveyed it to a third party, uncertainty of description of the property was removed by evidence, in a suit to remove a cloud upon the title, that only one lot was assessed to Dowling in the county, that this lot was situated on the S. W. corner of Pine and Franklin streets, in a certain city, and that, except in such city, there were no streets of the same names in the county. Dowling v. Reber, 65 Miss. 259, 3 So. 654, 7 Am. St. R. 651 (1888).

Land described as a specified number of acres of the south or north or east or west part of a particular legal subdivision, is well described. Bowers v. Chambers, 53 Miss. 259 (1876); McCready v. Lansdale, 58 Miss. 877 (1881); Enochs v. Miller, 60 Miss. 19 (1882).

5. —Particular descriptions, insufficient.

Description of land on tax roll as "Lot 5, Div. W. Estate, Section 8, Township 7, Range 2, assessed to E. W. Simmons," is void, but is susceptible to being perfected by extrinsic evidence. Sims v. Crecink, 208 Miss. 873, 45 So. 2d 737 (1950).

Tax deed is void on account of vague and uncertain description of land where tax deed refers to numbered lots in partition of estate by court proceeding and record of proceeding describes parcels of land by metes and bounds and not by numbers. Howard v. Wactor, 41 So. 2d 259 (Miss. 1949).

Description of land in tax sale to the state as the NE ¼ of the NE ¼ "less 2a" in a designated section, township, and range, was too indefinite and the tax sale was consequently illegal, unless the description could be aided and clarified by record evidence, such as the deed records and assessment rolls. Simmons v. State, 199 Miss. 271, 24 So. 2d 660 (1946).

Assessment description of certain lands as "NW ¼ SW ¼, less 6A, Section 2, Township 2, Range 18," although containing patent ambiguity by reason of "less 6 A" did not render the tax sale to the state void because of indefinite description where the tax conveyance to the state contained a clue, which traced through the assessment rolls and the deeds of conveyance, ultimately led to a definite description of the excepted 6 acres, the assessment rolls and deeds of conveyance being admissible in evidence to clarify the ambiguity by virtue of this section [Code 1942, § 9775]. Jefferson v. Walker, 199 Miss. 705, 24 So. 2d 343 (1946), error overruled, 199 Miss. 725, 26 So. 2d 239 (1946).

Tax sale, as well as easements upon which it was based, was utterly void for want of description, where pretended descriptions were "Pt. Sec. 28 Tp. 12R 3 E, 5 acres," "Pt. Sec. 29 Tp. 12R 12 E, 100 acres," and "Pt. Sec. 30 Tp. 12R 12 E, 29 acres." Meyerkort v. Warrington, 19 So. 2d 433 (Miss. 1944), opinion withdrawn, 198 Miss. 29, 20 So. 2d 708 (1945).

6. Admissibility of evidence as to description.

In an action to confirm title to land purchased at a tax sale, where the uncontradicted evidence of the assessor shows that tax assessor's official map was a part of the official records of the tax assessor's office, and where the rolls and conveyance indicate adequate clue to the proper description, such official map is admissible extrinsic evidence to properly identify the property assessed. Loper v. Hinds Land Co., 214 Miss. 644, 58 So. 2d 88 (1952), suggestion of error overruled, opinion modified, 214 Miss. 644, 59 So. 2d 326 (1952).

Regardless of the description used by a complainant in an action to confirm a tax title to land, his right, if any, must be referred to the description in the tax deed and assessment; it cannot be furnished by the pleading. Seward v. Carter, 190 Miss. 354, 200 So. 248 (1941).

Assessment roll must furnish clue which when followed by parol evidence conducts certainly to land intended, and clue must be furnished and appear on list of lands struck off, and cannot be supplied merely by name of owner. Brown v. Womack, 181 Miss. 66, 178 So. 785 (1938).

Assessment roll cannot aid description in tax deed when it contains a patent ambiguity. Brown v. Womack, 181 Miss. 66, 178 So. 785 (1938).

To warrant introduction of testimony to aid and make description found in assessment roll certain, there must be a definite clue shown by official map. Lott v. Rouse, 147 Miss. 802, 111 So. 838 (1927); Seward v. Carter, 190 Miss. 354, 200 So. 248 (1941).

An assessment of land in these words "Huntington & Le Valley Add. Owner's name, Goyer Company. All §§ 9 and 10, Township -, Range 18," cannot be shown by parol to mean lots 9 and 10 of block 18 of Huntington & Le Valley's addition to the city of Greenville. Leavenworth v. Greenville Wharf & Storage Co., 82 Miss. 578, 35 So. 138 (1903).

The statute will aid in showing in case of two assessments of the same land, which land was really paid upon. Dodds v. Marx, 63 Miss. 443 (1886).

7. —Parol evidence.

The sole purpose of admitting parol evidence is to apply the written description to a particular tract of land, and parol evidence can neither take away nor add to the written description, and where parol evidence as to land, whose written description was vague and ambiguous, showed only that the witness knew the land and where it was, was no aid to the description. Calmes v. Weill, 243 So. 2d 408 (Miss. 1971).

Parol testimony is competent in applying the description to a particular tract of land. Meek v. Farmers' Coop. (AAL), 216 Miss. 140, 61 So. 2d 778 (1953).

Parol testimony is admissible in order to identify and establish with certainty lands sold for taxes, but record of tax deed must furnish clue which when followed up will lead to positive identification of lands involved. Howard v. Wactor, 41 So. 2d 259 (Miss. 1949).

Parol testimony is admissible to show that "Div. J. J. W. Est." used in description of land in tax deed referred to estate of certain deceased person, which had been partitioned in court, and this reference was proper. Howard v. Wactor, 41 So. 2d 259 (Miss. 1949).

Parol evidence is admissible to explain the abbreviated recitals of the assessment roll and in a tax deed. Seward v. Carter, 190 Miss. 354, 200 So. 248 (1941).

One relying on the rule that parol evidence is available to explain the abbreviated recitals on the assessment roll and in the tax deed to aid the description of the land which he claimed under a tax title, is bound by the result which the application of the rule brings about. Seward v. Carter, 190 Miss. 354, 200 So. 248 (1941).

Parol testimony was admissible to apply the description of the assessment roll in order to show that the assessment roll properly identified the property in question, as against the contention that the assessment roll did not specify whether the lots assessed were being described according to the original or the corrected survey. Belhaven Heights Co. v. May, 187 Miss. 101, 192 So. 6 (1939).

In suit to cancel tax title acquired from state by patent, where assessment roll and list of lands struck off to state described land of taxpayer who owned half of certain section, as certain number of acres in such section, parol evidence was inadmissible to show that taxpayer's land was assessed and struck off. Brown v. Womack, 181 Miss. 66, 178 So. 785 (1938).

A description in a tax deed covering divisions shown not to exist held fatally defective and insufficient to authorize introduction of parol testimony to aid the description. Lott v. Rouse, 147 Miss. 802, 111 So. 838 (1927).

Parol testimony is admissible to aid an uncertain description. Martin v. Smith, 140 Miss. 168, 105 So. 494 (1925).

An instance where the description of land in the city of Gulfport on the assessment roll and tax deed was ambiguous and uncertain, it was held sufficiently definite under the law to permit oral testimony to explain the ambiguous description and uncertainty. Albritton v. Fairley, 116 Miss. 705, 77 So. 651 (1918).

Parol testimony may be used to aid and explain the terms of an assessment roll in identifying lands therein described. Standard Drug Co. v. Pierce, 111 Miss. 354, 71 So. 577 (1916).

Parol evidence is not admissible under this section [Code 1942, § 9775] to show that the description, "Lot 6, Collier's Estate, section 37, township 17, range 4 east, 13 acres," on an assessment roll includes "all of fractional section 39, township 16, range 4 east, 20 acres." Crawford v. McLauren, 83 Miss. 265, 35 So. 209 (1903), error overruled, 83 Miss. 278, 35 So. 949 (1904).

Parol evidence is admissible to show that lands mentioned in a tax receipt by a Spanish grant description are the same lands assessed and sold for taxes by a government survey description, showing section, township and range. Trager v. Jenkins, 75 Miss. 676, 23 So. 424 (1898); McQueen v. Bush, 76 Miss. 283, 24 So. 196 (1898).

A double assessment and payment of taxes on land by one description may be shown by parol evidence to invalidate a tax sale by the other description. Trager v. Jenkins, 75 Miss. 676, 23 So. 424 (1898).

But the roll must furnish the clue which when followed by the aid of parol testimony, conducts certainly to the land intended. It is admissible only to apply the description on the roll which must give the start and suggest the course which, being followed, will point out the land intended to be assessed. Dodds v. Marx, 63 Miss. 443 (1886).

8. —Unofficial or private plat.

Description of land on tax roll is not perfected by proof of private, recorded plat which is not connected with assessed description and which does not contain directions from which location of lot could be determined. Sims v. Crecink, 208 Miss. 873, 45 So. 2d 737 (1950).

Description of land on tax roll as "Lot 5, Div. W. Estate, Section 8, Township 7, Range 2, assessed to E. W. Simmons," is not perfected by proof of private, recorded plat of J. C. Williams Estate, without proof connecting assessed description with that of plat, and without proof that assessed owner got title through that estate, especially when plat contains no description of lots from which location of assessed lot could be determined and owner of assessed land was Sims and not Simmons as stated on tax roll. Sims v. Crecink, 208 Miss. 873, 45 So. 2d 737 (1950).

Where the description in the assessment and the tax deed, presumably sufficient in itself, did not apply to the lot claimed by the complainant, an unofficial plat, available to public inspection but made merely for the convenience and guidance of the county taxing authorities, could not aid as a basis for the introduction of parol testimony to apply to the description found in the assessment roll. Seward v. Carter, 190 Miss. 354, 200 So. 248 (1941).

9. —Record evidence.

In suit to cancel tax sale of city lot on ground assessment roll did not identify survey upon which assessment was based, there being two city subdivisions of same name, identity of subdivision to which assessment referred may be shown by introducing in evidence assessment roll, collector's list of lands sold, land roll, deed from collector to purchaser, deraignment of title of complainant including deed to predecessor from whom claimant inherited property, record of assessment and payment of taxes on lot of same description in other subdivision of same name. Freeman v. Adams, 207 Miss. 760, 43 So. 2d 362 (1949).

Record evidence, such as the deed record and assessment rolls, is competent in aid and clarification of the description of land sold at tax sale, so that such evidence may save the tax sale even though otherwise it would be invalid because of indefinite description. Simmons v. State, 199 Miss. 271, 24 So. 2d 660 (1946).

Under this section [Code 1942, § 9775] it is competent to offer in evidence assessment rolls, tax receipts and deeds which identify two acres on which taxes were paid for the purpose of identifying a fractional thirty-eight-acre tract sold for taxes and the description in the decree of confirmation may be thus aided as well as the tax deed. Illinois Cent. R.R. v. Le Blanc, 74 Miss. 650, 21 So. 760 (1897).

10. Assessment of separate lots.

Lands owned by the same individual but in different sections and separated only by public road should be assessed as a single tract. Wilkerson v. Harrington, 115 Miss. 637, 76 So. 563 (1917).

Lands entirely separated and in different sections should be assessed separately although they may be owned by the same person. Wilkerson v. Harrington, 115 Miss. 637, 76 So. 563 (1917).

Where several lots of land separated from each other of varying value, are assessed together at an aggregate sum and some are paid on and some are not, the tax collector has no power to change the assessment so as to exclude therefrom the lots paid on, making a proportional deduction from the aggregate valuation. A sale after such a change of such assessment is void. Speed v. McKnight, 76 Miss. 723, 25 So. 872 (1899).

11. Assessment of railroad right of way.

A decree confirming a tax title to land where the sale is made under general law and not a special provision for taxing a railroad company's right of way over it, carries the easement or right of way but it does not carry the company's track and superstructure. Illinois Cent. R.R. v. Le Blanc, 74 Miss. 650, 21 So. 760 (1897).

While ejectment can be maintained against a railroad company for its right of way, yet execution of such judgment should be stayed a reasonable time to prosecute condemnation proceedings for right of way. Illinois Cent. R.R. v. Le Blanc, 74 Miss. 650, 21 So. 760 (1897).

The general rule that things affixed to the freehold by trespassers belong to the owners of the soil does not apply to railroad companies because its track is an improvement made for public purposes. Illinois Cent. R.R. v. Le Blanc, 74 Miss. 650, 21 So. 760 (1897).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 656 et seq.

CJS. 84 C.J.S., Taxation §§ 691-696.

§ 27-35-63. Land sold to state assessed.

Lands which have been sold to the state for taxes shall be assessed in proportion to their true value, if the time for redemption has not expired, and if any of that, subject to redemption, be redeemed from the state, all taxes for which it was sold and damages and costs, and all subsequently accruing state, county, or other taxes due on it up to and including the year of redemption, if the county taxes have been levied at the date of redemption, shall be paid by the person redeeming it.

SOURCES: Codes, 1871, § 1678; 1880, § 493; 1892, § 3778; 1906, § 4287; Hemingway's 1917, § 6921; 1930, § 3152; 1942, § 9776; Laws, 1980, ch. 505, § 10, eff from and after passage (approved May 16, 1980).

Cross References — Redemption of property from tax sale, see § 27-45-1 et seq.

JUDICIAL DECISIONS

1. In general.

Where, after the sale of land to the state for delinquent taxes, the record owner applied to the chancery clerk for a release of the land from that sale, it was the clerk's duty to issue the release if, but not unless, he had collected from the record owner the payments required for the redemption of the land, including all taxes and costs which had accrued on the land since the sale. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

Where, after the sale of land to the state for delinquent taxes, the record owner applied to the chancery clerk for a release and the clerk neglected to collect the taxes due for 1934, such owner was not chargeable with clerk's failure in this respect unless he fraudulently participated therein. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

A description in a tax deed "all fractional § 24" of lands on the Mississippi river conveyed title to the alluvion which had formed in the river adjoining such sections. Smith v. Leavenworth, 101 Miss. 238, 57 So. 803 (1911), error dismissed, 235 U.S. 690, 35 S. Ct. 205, 59 L. Ed. 427 (1914).

ATTORNEY GENERAL OPINIONS

The legislative intent in amending § 27-45-3, but not amending this section, was to expedite the assessment, levy and collection of ad valorem taxes upon land; thus, upon a redemption of land from a sale to the state for unpaid ad valorem taxes, the redeemer must pay the sums required by this section. McLeod, June 11, 1999, A.G. Op. #99-0276.

§ 27-35-65. Land commissioner to transmit list.

The land commissioner shall, on the first Monday of January in every year, or as soon thereafter as practicable, make out and transmit to the assessor of each county through the chancery clerk, a list of all lands for which he has issued patents during the preceding twelve (12) months.

SOURCES: Codes, 1857, ch. 3, art 22; 1871, § 1681; 1880, § 496; 1892, § 3779; 1906, § 4288; Hemingway's 1917, § 6922; 1930, § 3153; 1942, § 9777.

Editor's Note — Pursuant to section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

Cross References — Municipal tax sales, see § 21-33-75.

Land sold by state as being subject to assessment, see § 29-1-83.

§ 27-35-67. Land redeemed or purchased from state assessed.

All lands redeemed under the provisions of this chapter, or purchased from the state in any manner, shall thereafter be assessed and dealt with as the property of individuals, and the tax collector shall thereafter, in his settlement of state, county, or other taxes, be required to account for all taxes on such lands which may be lawfully due, and which he should collect.

SOURCES: Codes, 1880, § 570; 1892, § 3860; 1906, § 4371; Hemingway's 1917, § 7010; 1930, § 3154; 1942, § 9778.

Cross References — Redemption of property from tax sale, see § 27-45-1 et seq.

§ 27-35-69. Examination of records by assessor.

The assessor shall carefully examine the records in his county to ascertain what lands have been redeemed or purchased from the state, or have been stricken by the land commissioner from the list of lands held by the state, and, in assessing land, he shall assess all such land as the property of individuals; and the board of supervisors, in examining the assessment roll, shall pay particular attention to this requirement.

SOURCES: Codes, 1880, § 571; 1892, § 3861; 1906, § 4372; Hemingway's 1917, § 7011; 1930, § 3155; 1942, § 9779; Laws, 1902, ch. 67 (15).

Editor's Note — Pursuant to Section 7-11-4, effective January 1, 1980, the words "state land commissioner," "land commissioner," "state land office" and "land office" shall mean the secretary of state.

§ 27-35-71. School lands taxable when leased.

All school lands known as the sixteenth sections, reserved for the use of schools, or lands reserved or granted in lieu of or as a substitute for the sixteenth sections, shall be liable, after the same shall have been leased, to be taxed as other lands are taxed during the continuance of the lease; but in case of sale thereof for taxes, only the title of the lessee or his assignee shall pass by the sale.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art 17 (21); 1857, ch. 3, art 20; 1871, § 1679; 1880, § 494; 1892, § 3780; 1906, § 4289; Hemingway's 1917, § 6923; 1930, § 3156; 1942, § 9780.

JUDICIAL DECISIONS

1. In general.

Sale of leasehold estate of sixteenth section lands to the state for nonpayment of taxes merged the unexpired term thereof in the greater fee simple title of the state and extinguished it, so that the state land commissioner was without power to sell such leasehold and issue a patent therefor. McCullen v. Mercer, 192 Miss. 547, 6 So. 2d 465 (1942).

A lessee of school lands is liable for the total value of the land to be assessed and for taxes thereon regardless of its value as leasehold. Board of Supvrs. v. Whittington, 118 Miss. 799, 80 So. 8 (1918).

ATTORNEY GENERAL OPINIONS

Since a sale for taxes of a sixteenth section land leasehold is deemed to pay the taxes, personal liability therefor is extinguished by such sale, and there is no subsequent duty upon a chancery clerk or a tax assessor and collector to collect said unpaid taxes. Crawford, April 10, 1998, A.G. Op. #98-0199.

There is no authority to tax sixteenth section land itself; the only authority granted to taxing authorities is to tax a leasehold interest therein. Wiggins, July 24, 1998, A.G. Op. #98-0403.

The value of a sixteenth section leasehold interest is taxed the same as other lands; that is, the leasehold is taxed as if the lessee holds the land in fee simple. Evans, May 9, 2003, A.G. Op. 02-0714.

§ 27-35-73. Assessor not to be paid unless whole county on roll.

Compensation shall not be allowed to the assessor unless he show on the assessment roll an assessment of all the land in his county; and it shall be the duty of the board of supervisors to carefully compare the assessment roll with the township maps of the county, with a view to the enforcement of this provision.

SOURCES: Codes, 1880, § 495; 1892, § 3781; 1906, § 4290; Hemingway's 1917, § 6924; 1930, § 3157; 1942, § 9781.

Cross References — Salaries of tax assessors, see §§ 25-3-3 through 25-3-7.
Correction and approval of rolls by state tax commission, see § 27-35-127.

§ 27-35-75. Clerk of supervisors to furnish assessor and tax commission certain data.

Whenever any road district or other taxing district or municipality is created, or when its metes and bounds are changed, the clerk of the board of supervisors shall deliver, within ten (10) days after such creation or alteration has been made final, to the tax assessor of the county and to the state tax commission a certified copy of the metes and bounds of the district or municipality, and, in addition to these copies, such official shall also furnish the tax commission with as many additional certified copies of such order as there are public service corporations operating in or through the district.

SOURCES: Codes, Hemingway's 1921 Supp § 7769s1; 1930, § 3158; 1942, § 9782; Laws, 1920, ch. 162; Laws, 1964, ch. 521, § 1, eff from and after passage (approved June 11, 1964).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Assessment of railroads and other public service corporations, see § 27-35-301 et seq.

§ 27-35-77. County superintendent to furnish certain data.

Whenever any change is made by the county board of education in the boundary line of any school district in the county, it shall be the duty of the county superintendent of education to furnish to the tax assessor of the county, tax collector of the county, the clerk of the board of supervisors and the state tax commission, within fifteen (15) days after the order of the county board of education making such change has become final, a certified copy of the metes and bounds of such school district, and, in addition to these copies, the said county official shall also furnish the state tax commission as many additional certified copies of such order as there are public service corporations operating in or through such district.

SOURCES: Codes, Hemingway's 1921 Supp § 7769t1; 1930, § 3159; 1942, § 9783; Laws, 1920, ch. 162; Laws, 1950, ch. 248; Laws, 1964, ch. 521, § 2; Laws, 1968, ch. 361, § 37, eff from and after January 1, 1972.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Assessment of railroads and other public service corporations, see § 27-35-301 et seq.

§ 27-35-79. Penalty for failure to comply with requirements of §§ 27-35-75 and 27-35-77.

The clerk of the board of supervisors, or the county superintendent of education, shall be liable on his bond for any taxes that any district or municipality shall fail to receive, if he fail to comply with the requirements of Sections 27-35-75 and 27-35-77.

SOURCES: Codes, Hemingway's 1921 Supp § 7769v1; 1930, § 3160; 1942, § 9784; Laws, 1920, ch. 162.

§ 27-35-81. When assessment rolls filed; board may extend time.

(1) If the assessment is conducted by or under the direction of the assessor, the assessor shall complete the assessment of both real and personal property and file the roll or rolls with the clerk of the board of supervisors on or before the first Monday in July of each year. He shall make an affidavit and append it to each roll, showing that he has faithfully endeavored to ascertain and assess all the persons and property in his county, that he has not omitted any person or thing, or placed upon, or accepted an under valuation of any property, through fear, favor or partiality, and that he has required every taxpayer to make the oath required to be taken by the person rendering a list of his taxable property wherever possible. The assessor shall file with the roll or rolls, under oath, a list showing the name of every taxpayer who has failed or refused to make oath to his tax lists.

(2) If the roll or rolls are not filed as required by this section on or before the first Monday in July of each year, the board of supervisors at its July meeting shall adopt an order showing the failure of the roll or rolls to be filed and shall certify to the Department of Revenue a statement showing such failure and the time necessary to complete the roll or rolls.

(3) Upon receipt of such certificate from the board of supervisors of any county, the Department of Revenue shall provide when such roll shall be completed and filed, and the date when the board of supervisors shall meet to equalize the roll or rolls, and the time when objections to the assessments contained in such roll or rolls, shall be heard by the board of supervisors, provided that not less than ten (10) days' notice shall be given prior to the hearing of such objections. When such roll or rolls shall be filed, they shall be dealt with in all respects as now provided by law except as to the time.

SOURCES: Codes, Hemingway's 1921 Supp § 7769a1; 1930, § 3161; 1942, § 9785; Laws, 1920, ch. 323; Laws, 1926, ch. 213; Laws, 2003, ch. 468, § 2; Laws, 2009, ch. 492, § 68, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Tax meetings of board of supervisors generally, see § 19-3-17.

Examination of assessment roll for determination of new assessments, see § 27-35-129.

Equalization of rolls by board of supervisors, see § 27-35-131.

JUDICIAL DECISIONS

1. In general.
2. Filing of assessment roll.
3. —Extension of time for filing; failure to file on time.
4. Affidavit of assessor.

1. In general.

A tax sale without a valid assessment as its foundation is void. North v. Culpepper, 97 Miss. 730, 53 So. 419 (1910).

The assessment roll may be used as evidence to show when the assessment was made. Kennedy v. Sanders, 90 Miss. 524, 43 So. 913 (1907).

A valid assessment as well as a legal levy tax is necessary to the validity of a tax sale. McCord v. Shaw, 77 Miss. 900, 27 So. 602 (1900), error overruled, 77 Miss. 910, 28 So. 958 (1900).

An assessment is a list made by the assessor, and it is not constituted of the lists rendered him by the taxpayers. Vicksburg Bank v. Adams, 74 Miss. 179, 21 So. 401 (1897).

2. Filing of assessment roll.

This section [Code 1942, § 9785] did not repeal Laws 1906, ch. 168, § 12, requiring the assessor of Jasper County to file copies of the land and personal assessment rolls of the county at each of the county seats of the two districts in which such county was divided. McFarland v. Masonite Corp., 209 Miss. 121, 46 So. 2d 84 (1950).

An assessment roll is not filed until it is delivered to the clerk of the board of supervisors for the purpose of being permanently kept in his office. McCord v. Shaw, 77 Miss. 900, 27 So. 602 (1900), error overruled, 77 Miss. 910, 28 So. 958 (1900).

Where there is no evidence as to when an assessment roll was presented to the clerk the presumption will be indulged that it was delivered at the proper time. Morgan v. Blewett, 72 Miss. 903, 17 So. 601 (1895).

3. —Extension of time for filing; failure to file on time.

An order extending the time for completing the assessment rolls is not invalidated because of failure to set out the evidence as to the competency of the assessor to complete the rolls and his excuse for not having completed them on time. Herndon v. Mayfield, 79 Miss. 533, 31 So. 103 (1902).

Where the title of a purchaser at a tax sale is cancelled because the roll was not filed at the time required by law he is entitled to charge the land with the amount of the purchase-price and taxes subsequently accrued and paid. Preston v. Banks, 71 Miss. 601, 14 So. 258 (1894).

Such relief cannot be granted in the absence of a cross bill praying for it, but the purchaser will be left to enforce his claim in an independent proceeding. Preston v. Banks, 71 Miss. 601, 14 So. 258 (1894).

4. Affidavit of assessor.

Failure of assessor to attach his affidavit to roll does not affect validity of assessment when assessment roll is duly filed with and approved by board of supervisors. Wilkinson v. Steele, 207 Miss. 701, 43 So. 2d 110 (1949).

Burden is on complainant in suit to cancel tax sale for lack of affidavit of assessor to establish that assessor failed to attach to roll his affidavit as required by this section [Code 1942, § 9785]. Wilkinson v. Steele, 207 Miss. 701, 43 So. 2d 110 (1949).

ATTORNEY GENERAL OPINIONS

Provided the County Board of Supervisors finds in accordance with Section 27-35-143(12) that property was assessed in excess of it actual value, then the Board may correct the assessment. Barry, Jan. 24, 2003, A.G. Op. #03-0026.

§ 27-35-83. Supervisors to equalize rolls; notice to taxpayers.

The board of supervisors shall immediately at the July meeting proceed to equalize such rolls and shall complete such equalization at least ten (10) days before the August meeting, and shall immediately by newspaper publication notify the public that such rolls so equalized are ready for inspection and examination. In counties having two (2) judicial districts, the board shall by order designate on what days during August it will begin in each of the two (2) districts upon its hearing of objections, and these days shall be named in the said notice, and the board shall be authorized to hold its sessions in the two (2) districts respectively as designated in the order aforesaid. The foregoing provision with reference to counties with two (2) judicial districts shall apply to any subsequent meetings whereof notice to taxpayers is necessary to be given.

SOURCES: Codes, Hemingway's 1921 Supp § 7769c1; 1930, § 3162; 1942, § 9786; Laws, 1920, ch. 323.

Cross References — Duties and powers of board of supervisors as to homestead exemptions, see § 27-33-37.

Equalization of assessments by board of supervisors, see § 27-35-131.

Validation, correction, or revision of land roll, see § 27-35-133.

Consideration of land roll and procedure for changes, see § 27-35-135.

Changes in assessments, see §§ 27-35-143 through 27-35-149.

JUDICIAL DECISIONS

1. In general.
2. Meetings in counties with two judicial districts.
3. Sufficiency of notice to taxpayers.
4. Necessity and sufficiency of record of notice to taxpayers.

1. In general.

County real property tax assessments violate equal protection clause of Fourteenth Amendment where county's adjustments to assessments for properties that have not been recently sold are too small to seasonably dissipate disparities, and where properties that have not been recently sold have thus been intentionally systematically undervalued. Allegheny Pittsburgh Coal Co. v. County Comm'n, 488 U.S. 336, 109 S. Ct. 633, 102 L. Ed. 2d 688 (1989).

Code 1942, § 2877, dealing with meetings of board of supervisors for transaction of business under the revenue law and Code 1942, §§ 9789, 9791, and this section [Code 1942, § 9786], dealing with assessments of property for purposes of taxation and revenue, are in pari materia and must be construed together and, if possible, read into each other so as to make a consistent whole. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Provisions of this section [Code 1942, § 9786] to the effect that board shall complete equalization at least ten days before the August meeting merely mean that board shall complete such equalization at least ten days before it sits for hearing of objections to assessments at its August meeting. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Manifest intention of legislature in enacting Code 1942, § 2877, permitting board of supervisors to remain in session as long as business requires, Code 1942, § 9786, providing that board shall complete equalization at least ten days before August meeting, Code 1942, § 9789, providing that board shall meet on first Monday of August to hear objections and Code 1942, § 9791, providing that if board fails to perform any duty in reference to assessment roll at time required by law, duty shall be performed at later date, is to require completion of equalization of assessments at least ten days before sitting of board of supervisors to hear objections to assessments and to give taxpayer period of ten days in which to examine roll and determine whether his assessment is fair, equal and uniform, and determine whether he desires to file any objection thereto, and subject to these rights of taxpayer, it is intention of legislature that board should have full opportunity and full power to validly, equally and uniformly assess all property so as to constitute valid assessment, to end that revenue by taxation might be forthcoming to meet necessary expenses of government. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Under Code 1942, §§ 2877, 9789, 9791, and this section [Code 1942, § 9786], when it is necessary for board of supervisors to continue in session in equalizing assessments until July 27th because business requires it, board is authorized to hear objections to assessments on August 6th, although first Monday of August is on 3rd, when proper notice is given by board at its July meeting of hearing of objections on August 6th. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Tax sales were void for non-compliance with this section [Code 1942, § 9786]. Downing v. Starnes, 35 So. 2d 536 (Miss. 1948).

Where the regular session of the board of supervisors began on July 7th, and the board provided for consideration of equalization of assessments until completion thereof, and then recessed from July 9th to July 14th, without specifying the nature of the business to be transacted on July 14th, the meeting on July 14th did not constitute an adjourned metting within the purview of the statute requiring order for adjournment to specify the business to be transacted thereat, and proceedings of board on latter date were valid. Luxich v. State, 8 So. 2d 510 (Miss. 1942).

Judicial decision involving notice given under statute requiring supervisors to notify public that equalized tax assessment rolls are ready for inspection held very persuasive as to meaning of statute, in view of subsequent reenactment thereof. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

Statutory public notice that equalized tax assessment rolls are ready for inspection held essential and jurisdictional. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

Statute must be strictly complied with, as regards statutory public notice that equalized tax assessment rolls are ready for inspection. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

The word "immediately" defined to mean as early as practicable. State ex rel. Knox v. Wyoming Mfg. Co., 138 Miss. 249, 103 So. 11 (1925).

2. Meetings in counties with two judicial districts.

Where July meeting of board of supervisors of Jones County, at which land rolls were supposed to have been equalized, adjourned to meet at Laurel in second judicial district of such county in August for purpose of hearing objections to the assessment and approving assessment roll, and to meet at Ellisville in the first judicial district on August 10 for that purpose after notice to taxpayers, the board was entitled to meet at Ellisville on August 10, to hear objections and approve the roll of lands in the first judicial district, although the August meeting of the board was the regular time for holding its meeting at Laurel in the second judicial district. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Under statute (Laws 1906, chapter 169, § 12) dividing Jones County into two separate judicial districts and providing that the board of supervisors in passing on the assessment roll shall at the proper meeting held by them at Laurel approve such of the roll as shall relate to and embrace property in the second judicial district, and at the proper meeting held in Ellisville shall approve such of the roll as shall relate to and embrace property in the first judicial district, in all instances acting upon the rolls, so far as territory embraced in each of the respective districts is concerned, in the same manner as though the action or approval of the assessment rolls related to the approval thereof of different counties, board of supervisors was without authority to approve assessment rolls of one judicial district of the county while in session in the other district and by an order entered on its minutes only in the latter district. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Where board of supervisors of Jones County, meeting in Ellisville in the first judicial district, entered order approving assessment rolls for land in that district but the minutes thereof were not signed by the president of the board, proper approval of the assessment roll and signing of the minutes therefor at a meeting in the second judicial district would not embrace the assessment roll in the first judicial district, in view of statute (Laws 1906, chapter 169, § 12), dividing Jones County into two separate judicial districts and providing for separate meetings and approval of the assessment rolls of land in the respective districts as if they were different counties. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Under this section [Code 1942, § 9786] the board of supervisors was authorized to adjourn a meeting from one district in the county to the other district thereof, where the order of the board of supervisors and notice to the public thereof complied with the statute in this respect so as to render such meetings legal. Belhaven Heights Co. v. May, 187 Miss. 101, 192 So. 6 (1939).

Where supervisors of county with two judicial districts made order in 1925 for equalization meeting in second district on first Monday of August of that year, and a "continued meeting" in first district beginning the 7th, action of board in approving assessment rolls of first district at the adjourned meeting was void. Sharp v. Smith, 180 Miss. 887, 178 So. 595 (1938).

3. Sufficiency of notice to taxpayers.

While newspaper notice to the public under this section [Code 1942, § 9786] serves the purpose of process, a notice is effective although not styled "The State of Mississippi" since the literal form for process to be served upon individuals is not required. Miller v. Lucks, 203 Miss. 824, 36 So. 2d 140, 3 A.L.R.2d 236 (1948).

The seal of the clerk of court required by Code 1942, § 1844 to be affixed to all process, is not required to be affixed to notices by the board of supervisors to taxpayers of tax assessments, since the statute requiring the seal is addressed to individuals and not to publication of a general notice by a board of supervisors to the public or a part thereof not specifically named, the object of the statute as to seal being to advise the party upon whom the writ is to be served that its authenticity is genuine. Mullins v. Lyle, 183 Miss. 297, 183 So. 696 (1938).

Under statute requiring supervisors to notify public that equalized assessment rolls are ready for inspection, notice held not defective because addressed to taxpayers rather than public; word "public" within statute meaning taxpaying public. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

Statute held to require public notice to state only that tax assessment rolls have been equalized and are ready for inspection. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

Newspaper notice to taxpayers that equalized assessment rolls were open for examination held substantial compliance with statute, notwithstanding inclusion of surplusage announcing that objections must be filed on or before first Monday of August. Such surplusage being in taxpayers' interest, and not precluding any taxpayer from asserting any statutory rights at August meeting of supervisors. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

The published notice of the time for equalizing taxes was not rendered void by the fact that it erroneously stated the day the order was entered, where it referred to the book and page in the minutes of the board in which the order would be found. State ex rel. Knox v. Wyoming Mfg. Co., 138 Miss. 249, 103 So. 11 (1925).

4. Necessity and sufficiency of record of notice to taxpayers.

Notice to taxpayers to appear and object to assessments is jurisdictional, and where it did not affirmatively appear on the minutes of the board of supervisors that such notice was given a tax sale under the assessment was void. White v. Merchants & Planters Bank, 229 Miss. 35, 90 So. 2d 11 (1956).

Where July minutes of the board of supervisors directed the form of notice that assessment rolls were equalized and ready for inspection and examination and the August minutes adjudicated that the notice was given in the manner and proper form of the published notice and made part of the August minutes with proof of publication of it, the minutes satisfied the statutory requirements. Loper v. Hinds Land Co., 214 Miss. 644, 58 So. 2d 88 (1952), suggestion of error overruled, opinion modified, 214 Miss. 644, 59 So. 2d 326 (1952).

Order of board of supervisors setting forth copy of notice to taxpayers that the assessment rolls were open for examination and for the filing of objections to any of the assessments, and reciting publication of such notice in a newspaper of the county and posting thereof in the courthouse, was a sufficient adjudication of the ultimate jurisdictional fact as a necessary prerequisite to the right of the board to hear the objections and approve the assessment roll, notwithstanding contention that the order failed to recite that proof of publication of the notice was actually on file before the board at the time of the entry of its order. Pinkerton v. Busby, 42 So. 2d 387 (Miss. 1949).

Order entered by board of supervisors at its November meeting, reciting that tax rolls having been approved by state tax commission and notice having been given to taxpayers as required by law, and that, there being no protest or objections filed by taxpayers, the rolls are approved, does not affirmatively show that notice required by this section [Code 1942, § 9786] to be given immediately on completion of equalization of rolls in July was given, and giving of such notice being jurisdictional, assessment roll for entire county is void. Berryhill v. Johnston, 206 Miss. 41, 39 So. 2d 530 (1949).

Notice to taxpayers held jurisdictional, and must appear of record to render valid order approving rolls. Henderson Molpus Co. v. Gammill, 149 Miss. 576, 115 So. 716 (1928); Berryhill v. Johnston, 206 Miss. 41, 39 So. 2d 530 (1949).

Where the board of supervisors caused to be published the entire order made at its July meeting, including the notice to the taxpayer and the certificate of the clerk that the order, including the notice, was a true and correct copy of the order of the board of supervisors, and at its August meeting, the board entered on its minutes the entire publication, including the certificate of the clerk and also the proof of publication of the publisher, and then entered the order finally approving the assessment rolls, the contention that the board of supervisors did not adjudicate that the publication and proof thereof was on file in the clerk's office at the time the order was made was without merit, since everything appeared on the minutes of the board of supervisors, certified to by the clerk, to show that the notice was on file with the clerk of the court on the day the final order approving the assessment was made by the board of supervisors. Mullins v. Lyle, 183 Miss. 297, 183 So. 696 (1938).

The minutes of the board of supervisors should show the notice to the taxpayers, given in the manner prescribed by law, it being necessary that such notice be actually filed with the board to give the latter jurisdiction to equalize the assessment roll. Federal Land Bank v. Cox, 183 Miss. 250, 183 So. 482 (1938).

Order of supervisors reciting that notice that tax assessment rolls were open for examination had been published in a newspaper of the county and posted in courthouse, sufficiently showed that proof of publication was on file, notwithstanding absence of evidentiary facts showing proof of publication. Pettibone v. Wells, 181 Miss. 425, 179 So. 336 (1938).

Order was required to recite only ultimate jurisdictional fact that notice had been published. Pettibone v. Wells, 181 Miss. 425, 179 So. 336 (1938).

One publication of notice was sufficient. Pettibone v. Wells, 181 Miss. 425, 179 So. 336 (1938).

But special meeting of supervisors for hearing objections to assessment rolls was void, and order at such meeting approving rolls was invalid, where notice was not copied in and made part of order approving rolls. Sharp v. Smith, 180 Miss. 887, 178 So. 595 (1938).

Notice of special meeting of supervisors for equalization of taxes is in nature of process to be served on public and the exclusive evidence of its service is its entry in full in the approval order of the board. Sharp v. Smith, 180 Miss. 887, 178 So. 595 (1938).

Under statute it could not be shown assessment was made according to law, where fact that notice had been given to taxpayers did not appear on minutes. Gordan v. Smith, 154 Miss. 787, 122 So. 762 (1929).

ATTORNEY GENERAL OPINIONS

Neither the board of supervisors nor the individual members thereof have any right, power or authority to equalize the assessed valuation of property except at the time and place specified in this section [Code 1942, § 9786]. 1933-35, A.G. Op. p. 61.

Neither the board of supervisors at special meeting nor the individual members thereof would have any right, power or authority to make any notations, changes or erasures on the "field sheets" of the county tax assessor. 1933-35, A.G. Op. p. 61.

The assessment roll or rolls as made by the tax assessor should be a copy of the field sheets as made by him and not as changed or altered by the board of supervisors or the individual members thereof. 1933-35, A.G. Op. p. 61.

In order for the assessment of property for taxes to be valid the provisions of the law must be strictly complied with. 1933-35, A.G. Op. p. 61.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 706 et seq., 831.

CJS. 84 C.J.S., Taxation § 704 et seq.

§ 27-35-85. Assessor to attend meetings of board of supervisors.

The assessor shall attend the July meeting and all subsequent sessions of the board of supervisors when and while the board is considering assessments and until the final approval of the assessment rolls and render all assistance which his knowledge or information may enable him to give.

SOURCES: Codes, Hemingway's 1921 Supp. § 3769d1; 1930, § 3163; 1942, § 9787; Laws, 1920, ch. 323.

§ 27-35-87. What to be done at meetings.

At the meeting for the equalization of assessments, the board of supervisors shall carefully examine the roll or rolls, and shall then and there cause to be assessed any person or thing that may be found to be omitted, and anything found to be undervalued may be correctly valued. In the year in which the land assessment is made, the board shall carefully examine the land roll and see that it embraces all the land in the county, and correctly represents it as being the property of individuals or the state or United States, according to the fact, and taxable or not taxable according to law, and that all is correctly described so as to be identified with certainty, and that there are no double assessments. All land improperly omitted from the roll shall be added thereto by the board or under its direction, and land incorrectly or insufficiently described shall be properly described, and land which is not classed correctly or undervalued shall be properly classified and valued. The board shall cause all corrections to be made in the rolls, which, being done, the board shall enter an order approving the assessments, with or without corrections, as the case may be, subject to the right of parties in interest to be heard on objections as hereafter provided.

SOURCES: Codes, 1880, § 505; 1892, § 3793; 1906, § 4305; Hemingway's 1917, § 6939; 1930, § 3164; 1942, § 9788.

Cross References — Jurisdiction and powers of board of supervisors, see § 19-3-41.
Taxpayer's estimate of value, see § 27-35-29.
Approval of assessments, see § 27-35-105.
Equalization by board of supervisors, see § 27-35-131.
Validation, correction and revision of land roll, see § 27-35-133.
Consideration of land roll and procedure for changes, see § 27-35-135.
Changes in assessments, see §§ 27-35-143 through 27-35-149.

JUDICIAL DECISIONS

1. In general.
2. Notice to taxpayers.
3. Objections by taxpayer.

1. In general.

In suit to confirm tax title wherein state and original complainants claiming through purchasers thereof, specifically alleged that land in question had been duly and legally assessed, and former owner denied legality of assessments, both original complainants and state under its cross-bill were required in order to obtain such relief to prove that the land had been duly and legally assessed. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Specific allegations by original complainants and state in suit to confirm tax title that land in question, situated in the first judicial district of Jones County, was duly and legally assessed would include approval of assessment rolls in first judicial district of such county at the August meeting of the board of supervisors sitting at Ellisville in such district. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Where proof, which went in without objection in trial courts, disclosed affirmatively that the minutes of the meeting of the board of supervisors of Jones County at Ellisville, at which order approving assessment rolls of the first judicial district of such county was entered, were not signed by the president of the board as required by law, effect of failure to sign the minutes on the validity of the assessment and subsequent tax sale of land assessed was sufficiently raised by former owner's denial of legality of the assessment as alleged in the original bill and cross-bill of the state in suit to confirm tax title. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Changes in an assessment made by the board of supervisors must be entered on the roll. Board of Supvrs. v. Conner Lumber Co., 107 Miss. 368, 65 So. 466 (1914); Norwood v. Lumber-Mineral Co., 65 So. 468 (Miss. 1914).

The sale for taxes of land assessed to the state was void, although before the sale was had a line was drawn through the word "state" on the assessment roll, as such change did not constitute an assessment to owner known. Smith v. Leavenworth, 101 Miss. 238, 57 So. 803 (1911), error dismissed, 235 U.S. 690, 35 S. Ct. 205, 59 L. Ed. 427 (1914).

In equalizing assessments all changes made by the board of supervisors must be noted on the roll itself, for when completed it is the warrant under which the collector acts. The minutes need not show each. After all corrections are made the board should approve the roll by a general order. Yazoo Delta Inv. Co. v. Suddoth, 70 Miss. 416, 12 So. 246 (1893).

2. Notice to taxpayers.

Where the only sitting of the board of supervisors of Jones County at Ellisville in the first judicial district during August was on a specific date at which an order was entered for approval of the assessment roll for lands in the first judicial district, and the minutes for such meeting were not signed by the president of the board, the assessment and subsequent tax sale based thereon were void, and state acquired no title by virtue of such sale as to warrant confirmation thereof either by the state or persons claiming through purchasers from the state. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Under statutes (Laws 1906, chapter 169, § 12) dividing Jones County into two separate judicial districts and providing that the board of supervisors in passing on the assessment roll shall at the proper meeting held by them at Laurel approved such of the roll as shall relate to and embrace property in the second judicial district, and at a proper meeting held in Ellisville shall approve such of the roll as shall relate to and embrace property in the first judicial district, in all instances acting upon the rolls, so far as territory embraced in each of the respective districts is concerned, in the same manner as though the action or approval of the assessment rolls related to the approval thereof of different counties, board of supervisors was without authority to approve assessment rolls of one judicial district of the county while in session in the other district and by an order entered on its minutes only in the latter district. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Where board of supervisors of Jones County, meeting in Ellisville in the first judicial district, entered order approving assessment rolls for land in that district but the minutes thereof were not signed by the president of the board, proper approval of the assessment roll and signing of the minutes therefor at a meeting in the second judicial district would not embrace the assessment roll in the first judicial district, in view of statute (Laws 1906, chapter 169, § 12), dividing Jones County into two separate judicial districts and providing for separate meetings and approval of the assessment rolls of land in the respective districts as if they were different counties. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Newspaper notice to taxpayers that equalized assessment rolls were open for examination held substantial compliance with statute, notwithstanding inclusion of surplusage announcing that objections must be filed on or before first Monday of August; such surplusage being in taxpayers' interest, and not precluding any taxpayer from asserting any statutory rights at August meeting of supervisors. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

On appeal from judgment of board of supervisors as to taxes, circuit court has same power as board. Knox v. L.N. Dantzler Lumber Co., 148 Miss. 834, 114 So. 873 (1927); Norwood v. Lumber-Mineral Co., 65 So. 468 (Miss. 1914).

3. Objections by taxpayer.

Taxpayer is concluded and prevented from filing objections to equalize tax assessment rolls only by final approval of rolls by supervisors or by operation of law. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

Taxpayers failing to appeal from an order of the board of supervisors approving an assessment are concluded thereby. Yazoo Delta Inv. Co. v. Suddoth, 70 Miss. 416, 12 So. 246 (1893).

ATTORNEY GENERAL OPINIONS

Neither the board of supervisors nor the individual members thereof have any right, power or authority to equalize the assessed valuation of property except at the time and place specified in this section [Code 1942, § 9786]. 1933-35, A.G. Op. p. 61.

Neither the board of supervisors at special meeting nor the individual members thereof would have any right, power or authority to make any notations, changes or erasures on the "field sheets" of the county tax assessor. 1933-35, A.G. Op. p. 61.

The assessment roll or rolls as made by the tax assessor should be a copy of the field sheets as made by him and not as changed or altered by the board of supervisors or the individual members thereof. 1933-35, A.G. Op. p. 61.

In order for the assessment of property for taxes to be valid the provisions of the law must be strictly complied with. 1933-35, A.G. Op. p. 61.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 712 et seq.

CJS. 84 C.J.S., Taxation §§ 712-719, 724, 757.

§ 27-35-89. Objections to assessments generally.

(1) The board of supervisors of each county shall hold a meeting at the courthouse, or at the chancery clerk's office in counties where the chancery clerk's office is in a building separate from the courthouse, on the first Monday of August, to hear objections to the assessment. The board shall examine the assessment rolls, and hear and determine all exceptions thereto, and shall sit from day to day until the same shall have been disposed of, and all proper corrections made, or may take objections under advisement as provided in subsection (2) of this section. The board shall equalize the assessment and may increase or diminish the valuation of any property, so that property of the same value shall be assessed for an equal sum. Where an individual assessment has been increased immediate notice in writing shall be sent by mail to the person whose assessment is increased by the clerk of the board of supervisors. At the said meeting the board shall have the power to change erroneous assessments or to add omitted property but any person affected by such action shall have notice as next above provided. If the board adjourn before considering the objections filed, such objections shall be heard at the next regular meeting of the board.

(2) The board of supervisors may take an objection under advisement to allow the taxpayer or his designee, the tax assessor or the board to compile information relating to the objection; however, the board shall enter an order on the objection on or before the first Monday of September.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769d1; 1930, § 3165; 1942, § 9789; Laws, 1920, ch. 323; Laws, 1989, ch. 338, § 1, eff from and after July 1, 1989.

Cross References — Examination of roll to determine necessity of new assessment, see § 27-35-129.

Equalization by board of supervisors, see § 27-35-131.

Consideration of land roll and procedure for changes, see § 27-35-135.

Objections to railroad assessments, see § 27-35-311.

Objections to assessments against transportation companies operating or furnishing railroad cars, see § 27-35-517.

Objections to motor vehicle ad valorem tax assessments, see § 27-51-23.

JUDICIAL DECISIONS

1. In general.
2. Notice to taxpayer.
3. Extent of conclusiveness of order or approval.

1. In general.

Code 1942, § 2877, dealing with meetings of board of supervisors for transaction of business under the revenue law and Code 1942, §§ 9786, 9791, and this section [Code 1942, § 9789], dealing with assessments of property for purposes of taxation and revenue are in pari materia and must be construed together and, if possible, read into each other, so as to make a consistent whole. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Manifest intention of legislature in enacting Code 1942, § 2877, permitting board of supervisors to remain in session as long as business requires, Code 1942, § 9786, providing that board shall complete equalization at least ten days before August meeting, Code 1942, § 9789, providing that board shall meet on first Monday of August to hear objections and Code 1942, § 9791, providing that if board fails to perform any duty in reference to assessment roll at time required by law, duty shall be performed at later date, is to require completion of equalization of assessments at least ten days before sitting of board of supervisors to hear objections to assessments and to give taxpayer period of ten days in which to examine roll and determine whether his assessment is fair, equal, and uniform, and determine whether he desires to file any objection thereto, and subject to these rights of taxpayer, it is intention of legislature that board should have full opportunity and full power to validly, equally and uniformly assess all property so as to constitute valid assessment, to end that revenue by taxation might be forthcoming to meet necessary expenses of government. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Supervisors, if making all corrections and disposing of objections to equalized tax assessment rolls on first Monday of August, may enter final order on same day. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

Church property not being absolutely exempt from taxation, injunction was not proper method to determine exemption. North Am. Old Roman Catholic Diocese v. Havens, 164 Miss. 119, 144 So. 473, 84 A.L.R. 1313 (1932).

There was no right of appeal from an order of the board of supervisors equalizing assessments until after action thereon by the state tax commission, since the order was not final, but interlocutory. Moller-Vandenboom Lumber Co. v. Board of Supvrs., 135 Miss. 249, 99 So. 823 (1924).

Objections to an assessment must be filed or the person assessed will be precluded from questioning its validity. North v. Culpepper, 97 Miss. 730, 53 So. 419 (1910).

To assess land owned by different persons and not contiguous in one assessment, as one tract at a specified sum per acre is an irregularity, which may be corrected by proceedings under this section [Code 1942, § 9789]. North v. Culpepper, 97 Miss. 730, 53 So. 419 (1910).

Where different adjacent tracts of land include lands of different values the assessor must specify it, but where he does not his failure to do so will not void the assessment. North v. Culpepper, 97 Miss. 730, 53 So. 419 (1910).

2. Notice to taxpayer.

Under Code 1942, §§ 2877, 9786, 9791, and this section [Code 1942, § 9789], when it is necessary for board of supervisors to continue in session in equalizing assessments until July 27th because business requires it, board is authorized to hear objections to assessments on August

6th, although first Monday of August is on 3rd, when proper notice is given by board at its July meeting of hearing of objections on August 6th. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Notice in writing by mail of an increase of tax assessments under this section [Code 1942, § 9789] applies only to increases made at the August meeting of the board of supervisors, held for the purpose of hearing objections to assessments, and has no application to an increase of assessments made at the July meeting of the board as provided for by Code 1942, §§ 9786 and 9788, for the equalization of assessments. Day Bros. v. Board of Supvrs., 183 Miss. 240, 184 So. 453 (1938).

Newspaper notice that equalized assessment rolls were open for examination held substantial compliance with statute notwithstanding inclusion of surplusage which was in taxpayer's interest. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

3. Extent of conclusiveness of order or approval.

Even though the assessment of an interest in land has been made to the wrong person, the final judgment of the taxing authorities is conclusive in the absence of objections thereto presented in the manner prescribed by Code 1942, § 9790, as to all issues resting in pais. Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

The order of the board of supervisors approving the assessment roll was not final, but only interlocutory, until action thereon by the state tax commission. Moller-Vandenboom Lumber Co. v. Board of Supvrs., 135 Miss. 249, 99 So. 823 (1924).

In a proceeding to confirm the title of a purchaser at a tax sale the judgment of the board of supervisors approving the assessment roll cannot be attacked by proving matters in pais on which the final judgment rested. Yazoo Delta Lumber Co. v. Eastland, 104 Miss. 553, 61 So. 597 (1913).

The approval of the assessment by the board of supervisors is not conclusive that the taxpayer has listed with them the roll containing all the taxable property owned by him. Such approval under this section [Code 1942, § 9789] is conclusive as to the validity of the assessment as against the taxpayer that he is liable for the taxes as against the public that the value of the enumerated property is there given. Adams v. Clarke, 80 Miss. 134, 31 So. 216 (1902).

The approval is conclusive only of irregularities and matters of fact resting wholly in pais. It is not final as to claims of exemption under statutory or constitutional provisions. Horne v. Green, 52 Miss. 452 (1876).

§ 27-35-91. Filing of assessment rolls for Harrison County; hearing on objections.

It shall be the duty of the assessor of Harrison county to file with the chancery clerk of said county two (2) copies each of the land and personal rolls of said county, filing one (1) of each with the said clerk at his office at Gulfport and one (1) of each at his office at Biloxi, and the board of supervisors, in passing on said assessment rolls, shall at the proper meeting held by them at Biloxi, approve such of said rolls as shall relate to and embrace property included and being in the second district, and at the proper meeting held in Gulfport shall approve such of said rolls as shall relate to and embrace property included in the first district, and in all instances acting upon said rolls, insofar as the territory embraced in each of the respective districts is concerned, in the same manner as though the action or approval of the assessment rolls related to the approval thereof of different counties. The assessor and clerk shall provide suitable copies of said entire rolls, as finally approved, in all instances where required by law, as though said rolls related to different counties; provided, that only one (1) copy of each shall be required to be filed with any state office, in which said roll shall be required to be filed under the law now or hereafter existing, insofar as the same shall relate to each of said districts.

At the time of hearing objections to the assessment rolls each year, the board shall adjourn, for the purpose of hearing objections to the assessment roll, from the district in which it may be regularly in session to the other district, and remain in session not longer than the time provided by law for a separate county and so as to give a hearing on any objections to the taxpayers of the respective districts in the particular district of the taxpayer insofar as may be practical under the circumstances.

SOURCES: Codes, 1942, §§ 2910-12, 2910-13; Laws, 1962, ch. 257, §§ 12, 13, eff from and after passage (approved June 1, 1962).

§ 27-35-93. Objections must be filed or assessment to stand.

A person who is dissatisfied with the assessment may, at the August meeting, present objections thereto in writing which shall be filed by the clerk and docketed and preserved with the roll. All persons who fail to file objections shall be concluded by the assessment and precluded from questioning its validity after its final approval by the board of supervisors or by operation of law, except minors and persons non compos mentis.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769e1; 1930, § 3166; 1942, § 9790; Laws, 1920, ch. 323.

Cross References — Approval of assessments, see § 27-35-105.
Equalization by board of supervisors, see § 27-35-131.

JUDICIAL DECISIONS

1. In general.
2. Sufficiency of objections.

1. In general.

Circuit court properly granted summary judgment to a county board of supervisors and denied the leaseholders' request for a declaratory judgment because the leaseholders did not timely lodge an objection to a spike in their ad valorem taxes with the board or present sufficient evidence to establish that they leased the land for agricultural purposes, none of their 2010 assessments varied more than 10 percent from the previous year, and the court order that they cited did not apply to them. Darden v. Bd. of Supervisors, 169 So. 3d 913 (Miss. Ct. App. 2014).

In a taxpayer's suit to enjoin the State Tax Commission from approving each county's recapitulation of its assessment rolls until such time as the Commission should comply with its duty to equalize assessments among counties as provided by Code 1972 § 27-35-113 et seq. and Const. 1890 Art 4 § 112, the complaint was sufficient to warrant the conclusion that the Commission's actions result in the collection of taxes "without authority of law" as a prerequisite for injunctive relief under Code 1972 § 11-13-11, where the complaint alleged the Commission's failure over a period of many years to carry out its duty of equalizing assessments and in essence alleged that owners of parcels of land of identical value in different counties may face radically different tax liabilities; no adequate legal remedies were provided by Code 1972

§ 27-35-163, which allow a taxpayer to obtain a judicial determination that a particular piece of property has been improperly assessed and to obtain a reduction in the tax, or by Code 1972 § 27-35-93 & § 27-35-119, which prescribe methods by which to determine the proper assessment of the particular piece of property, since plaintiff-taxpayer was not alleging an erroneous computation of the value of his property and was not seeking a new calculation of his tax. Fondren v. State Tax Comm'n, 350 So. 2d 1329 (Miss. 1977).

This section [Code 1942, § 9790] has no application to a case in which a tax sale is questioned because the sheriff and tax collector made a new assessment of two separated and separately assessed tracts as a unit, and so advertised and sold them. State v. Gardner, 236 Miss. 768, 112 So. 2d 362 (1959).

Although Code 1942, § 9789 appears to be broad enough to authorize the taxing authorities to give relief from an assessment by valid surface description of the entire fee to the owner of the surface interest so as to make the assessment of mineral interests an assessment to the wrong person, this section [Code 1942, § 9790], by allowing valid objections to be filed, impliedly authorizes the taxing authorities to give such relief. Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

No appeal will lie from the action of the board of supervisors in approving the roll of assessments at its August meeting, where the taxpayer fails to file any objections in writing at such August meeting pursuant to notice given in that behalf with respect to equalization of assessments at its July meeting. Day Bros. v. Board of Supvrs., 183 Miss. 240, 184 So. 453 (1938).

Taxpayer is concluded and prevented from filing objections to equalize tax assessment rolls only by final approval of rolls by supervisors or by operation of law. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

Supervisors, if making all corrections and disposing of objections to equalized tax assessment rolls on first Monday of August, may enter final order on same day. Rawlings v. Ladner, 174 Miss. 611, 165 So. 427 (1936).

Ordinance providing that municipal assessments should be made in manner prescribed for county assessments held not to make statute dealing with county assessments applicable to municipal assessments so as to require written protest by objecting taxpayer as condition to right to appeal from assessment to circuit court in view of statute authorizing "any person aggrieved" by action of municipal board in matter of municipal assessments to appeal to the circuit court. Rawlings v. City of Hattiesburg, 171 Miss. 136, 157 So. 254 (1934).

Order increasing assessment, if void, should be disregarded, thereby leaving original assessment in force. Tatum v. Smith, 158 Miss. 511, 130 So. 683 (1930).

If order increasing taxes was void, tax sale was valid where taxpayer did not tender taxes due under original assessment. Tatum v. Smith, 158 Miss. 511, 130 So. 683 (1930).

Written objections may be filed by property owners, but such is not necessary in order to authorize the board of supervisors at its equalization meeting to increase or decrease assessments. Wray v. Cleveland State Bank, 134 Miss. 41, 98 So. 442 (1924).

A joint assessment of two tracts of land owned by different persons and entirely separated is an irregularity, but by failure to object thereto until after the land is sold for taxes, the owner will be precluded from questioning the validity of the assessment. Jones v. Moore, 118 Miss. 68, 79 So. 3 (1918).

2. Sufficiency of objections.

Where taxpayer did not make objection to assessment in writing, but objected orally, taxpayer was concluded by assessment, and could not appeal. Adams County v. Bank of Commerce in Liquidation, 157 Miss. 249, 128 So. 110 (1930); Worsham Bros. v. Board of Supvrs., 238 Miss. 369, 118 So. 2d 616 (1960).

Injunction held not proper method to determine exemption of church property. North Am. Old Roman Catholic Diocese v. Havens, 164 Miss. 119, 144 So. 473, 84 A.L.R. 1313 (1932).

But under statute prior to present amendment it was held that a person aggrieved by the decision of the board of supervisors increasing the assessors' valuation of his property might appeal, although he did not object thereto in any way. Louis Cohn & Bros. v. Lincoln County, 119 Miss. 718, 81 So. 492 (1919).

RESEARCH REFERENCES

ALR. Who may complain of underassessment or nonassessment of property for taxation. 5 A.L.R.2d 576.

§ 27-35-95. Meeting not held; objections to assessments; notice given of proper time.

If from any cause the meeting of the board of supervisors at which objections to assessments should be heard, be not held, then all such objections shall be continued and may be heard at the next meeting of the board, either regular, adjourned, or special. If the board fails to give the proper notice to the taxpayers of the meeting at which objections are to be heard, the board shall immediately proceed to give such notice and shall fix the time when it will hear and determine all objections to the assessments therein contained, and the board shall proceed and deal with the roll, or rolls, with all the powers and duties as are now provided by law, except as to the time. If the board fails to hold any meeting, or give any notice, or to perform any other duty in reference to the assessment roll, or rolls, at the time required by law, such duty shall be performed at a later date upon the giving of proper notice to persons affected.

SOURCES: Codes, 1892, § 3792; 1906, § 4304; Hemingway's 1917, § 6938; 1930, § 3167; 1942, § 9791; Laws, 1926, ch. 211.

Cross References — Special and adjourned meetings of board of supervisors, see § 19-3-19.

Objections to assessment roll, see § 27-35-89.

Equalization by board of supervisors, see § 27-35-131.

JUDICIAL DECISIONS

1. In general.

Where the board of supervisors published a notice that the board would be in session on August 8th for the purpose of hearing objections to the assessments and the board met in regular session on the 6th day of August and adjourned the 9th day of August and then recessed until August 14th, when it heard the objections to the assessments and approved the rolls making them final, it was not necessary that the board fix a new date for the hearing of objections to the assessments or publish any other notice for taxpayers merely because they recessed the regular August meeting from August 6th until August 9th. De Moe v. McLeod, 228 Miss. 481, 87 So. 2d 906 (1956), error overruled, 228 Miss. 491, 89 So. 2d 730 (1956).

Code 1942, § 2877, dealing with meetings of board of supervisors for transaction of business under the revenue law and Code 1942, §§ 9786, 9789, and this section [Code 1942, § 9791] dealing with assessments of property for purposes of taxation and revenue are in pari materia and must be construed together and, if possible, read into each other, so as to make a consistent whole. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Manifest intention of legislature in enacting Code 1942, § 2877, permitting board of supervisors to remain in session as long as business requires, Code 1942, § 9786, providing that board shall complete equalization at least ten days before August meeting, Code 1942, § 9789, providing that board shall meet on first Monday of August to hear objections and Code 1942, § 9791, providing that if board fails to perform any duty in reference to assessment roll at time required by law, duty shall be performed at later date, is to require completion of equalization of assessments at least ten days before sitting of board of supervisors to hear objections to assessments and to give taxpayer period of ten days in which to examine roll and determine whether his assessment is fair, equal, and uniform, and determine whether he desires to file any objection thereto, and subject to these rights of taxpayer, it is intention of legislature that board should have full opportunity and full power to validly, equally, and uniformly assess all property so as to constitute valid assessment, to end that revenue by taxation might be forthcoming to meet necessary expenses of government. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

Under Code 1942, §§ 2877, 9786, 9789, and this section [Code 1942, § 9791], when it is necessary for board of supervisors to continue in session in equalizing assessments until July 27th because business requires it, board is authorized to hear objections to assessments on August 6th, although first Monday of August is on 3rd, when proper notice is given by board at its July meeting of hearing of objections on August 6th. Beard v. Stanley, 205 Miss. 723, 39 So. 2d 317 (1949).

§ 27-35-97. Supervisors may require books and papers to be produced.

The board of supervisors may require any person, firm, corporation, or bank to bring their books before them while sitting as an equalization board or when hearing objections or complaints, or when sitting to carry out the orders of the tax commission, and such other papers as will fully inform them as to the true value of the property to be assessed. Any person or concern failing or refusing to comply with such demand shall be precluded from objecting to any such assessment.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769p1; 1930, § 3168; 1942, § 9792; Laws, 1920, ch, 323.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-35-99. Assessments; timber estimators may be employed by supervisors.

The board of supervisors of any county in the State of Mississippi are hereby authorized, in their discretion, to employ a timber estimator or timber estimators, as such board of supervisors may deem necessary, to estimate any timber, or to ascertain the quantity and quality of any timber, which may be subject to assessment for taxes under the laws of the State of Mississippi at any time it may become necessary for any board of supervisors to have correct information as to estimates of timber, or correct information as to the quantity and quality of any timber taxable under the laws of the state, in order that such board of supervisors may correctly equalize assessments, and correctly perform the duties required of them with reference to the assessment of property; or at any time it may become necessary for any such board of supervisors to have correct timber estimates or correct information as to the quantity and quality of any taxable timber, for use as evidence in defending any litigation in any court, in which the assessment of any such timber may be contested or attacked, or the collection of taxes thereon may be delayed or prevented.

SOURCES: Codes, Hemingway's 1921 Supp. § 3811f; 1930, § 3169; 1942, § 9793; Laws, 1917, ch. 43; Laws, 1918, ch. 185.

§ 27-35-101. Surveys and appraisals authorized.

The board of supervisors of any county in this state is hereby authorized in its discretion, to have the cultivatable, uncultivatable, or timbered lands of any owner, or of the entire county or any part thereof, surveyed and the acreage thereof determined and the value of the lands and of any timber, buildings or improvements thereon appraised by a competent person or persons, to be selected by the board of supervisors, the cost thereof to be paid from the general county fund. The board of supervisors of any county is hereby authorized to have the lots and blocks or other tracts in the municipalities of the county surveyed and the area determined, and the valuation thereof and of any buildings, structures, or other improvements thereon, appraised for the purpose of taxation in the same manner and at the same time that lands outside of municipalities are surveyed and appraised. In case a survey and appraisal is ordered, at least thirty (30) days' notice by publication shall be given and competitive bids received for the work. When such survey and appraisal is made, a permanent record thereof shall be made and preserved by the clerk of the board of supervisors, to which the tax assessor of the county shall at all times have access.

The board of supervisors of any county in this state having within its boundaries a municipality with a population in excess of one hundred fifty thousand (150,000) according to the latest federal census, is authorized to secure from such municipality surveys, appraisals and related materials made or caused to be made by it for the valuation for assessment purposes of property located in such municipality, and to pay to such municipality therefor out of the general county fund such sum or sums as may be agreed upon between such board of supervisors and the governing authorities of such municipality, all of which may be done without the necessity of publication of notice for or the reception of bids.

SOURCES: Codes, 1930, § 3170; 1942, § 9794; Laws, 1922, ch. 267; Laws, 1972, ch. 391, § 1, eff from and after passage (approved April 26, 1972).

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 27-35-101 requires a county to advertise for bids for reappraisal services and has to be read together with Miss. Code Ann. § 27-35-165 and Miss. Code Ann. § 19-3-69. Hence, court erred in holding that a county had the authority to enter into a contract for appraisal services with an appraiser without advertising for bids; county was required to comply with the advertising-for-bids provisions of Miss. Code Ann. § 27-35-101 for its reappraisal work. State ex rel. Hood v. Madison County, 873 So. 2d 85 (Miss. 2004).

The mere fact that the state constitution requires each county to have a tax assessor does not prevent the legislature from authorizing the board of supervisors, in its discretion, to employ competent persons to make a survey and an appraisal of property, and to pay for this service out of the general fund of the county. Sigalas v. Board of Supvrs., 185 So. 2d 420 (Miss. 1966), overruled on other grounds, White v. Gautier Util. Dist., 465 So. 2d 1003 (Miss. 1985).

Where a board of supervisors, acting under authority of this section [Code 1942, § 9794], entered into a contract with a private company to have the property in the county surveyed and appraised for tax purposes, the legislature had authority by the passage of a local act to permit the county to amortize the payment of the contract which was authorized by law and requested to be paid from the general fund. Sigalas v. Board of Supvrs., 185 So. 2d 420 (Miss. 1966), overruled on other grounds, White v. Gautier Util. Dist., 465 So. 2d 1003 (Miss. 1985).

Taxpayers seeking to challenge the authority of the Board of Supervisors in letting appraisal contracts under § 27-35-101 were not entitled to injunctive relief under § 11-13-11 where the taxpayers had a complete and adequate remedy at law through § 27-35-119. Lewis v. Mass Appraisal Servs., Inc., 396 So. 2d 35 (Miss. 1981).

ATTORNEY GENERAL OPINIONS

If proposed contract is to survey and reappraise plan proposed by county, Section 27-35-101 expressly requires competitive bidding but if contract is strictly to provide a professional service to county, it does not require competitive bidding under Section 31-7-13. Gex, Jan. 5, 1994, A.G. Op. #93-0970.

If a proposed contract is to survey and appraise the county, competitive bidding is required, but if a contract is to provide some other professional service to the county, no competitive bidding is necessary. Bean, January 23, 1998, A.G. Op. #97-0797.

A violation of the statute would occur if a county either entered into a new contract with an existing contractor or modified an existing contract, if, in either event, the purpose of the new agreement was to accomplish a survey of the county for tax purposes pursuant to the statute; however, if the purpose of the new contract or modification of the existing contract was merely to complete a Geographic Information Service mapping system, then no violation the statute would occur even if as a result of such completion tax parcel mapping would be accomplished. Yancey, March 3, 2000, A.G. Op. #2000-0082.

A county board of supervisors does not have the authority to contract away the duties of the tax assessor; however, it is within the authority of the board of supervisors to survey, map, and appraise the property in the county. Barber, Oct. 5, 2001, A.G. Op. #01-0631.

§ 27-35-103. Pay of persons employed as estimators, surveyors and appraisers.

Any person or persons employed by the board of supervisors of any county in this state, under Sections 27-35-99 and 27-35-101, shall be paid for their services out of the general fund of the county in which such person or persons are so employed. No person related to any member of the board of supervisors by affinity or consanguinity, shall be appointed estimator or inspector or surveyor by the board of supervisors. The compensation for estimators or inspectors shall be fixed at a sum not to exceed Five Cents (5¢) per acre for estimating timber on upland, and not exceeding Ten Cents (10¢) per acre for estimating timber on lowlands. No payment shall be made by the board of supervisors until a sworn itemized statement of the number and location of acres actually estimated by such estimator, or inspector, has been filed by him with the clerk of the board of supervisors.

SOURCES: Codes, Hemingway's 1921 Supp. § 3811g; 1930, § 3171; 1942, § 9795; Laws, 1918, ch. 185.

§ 27-35-105. Approval of assessments.

Assessments must be approved by an order of the board of supervisors entered on the minutes; but the failure to make and enter such order shall not vitiate the assessment if it shall appear that the assessment was made according to law.

SOURCES: Codes, 1892, § 3794; 1906, § 4306; Hemingway's 1917, § 6940; 1930, § 3172; 1942, § 9796.

Cross References — Procedure to determine correctness of assessment, see § 27-35-87.

JUDICIAL DECISIONS

1. In general.

Taxpayer who has caused minerals to be assessed to himself by collector separately from surface is not required to appear before board of supervisors and insist that board enter order approving assessment made by collector when it appears that board of supervisors would not assess minerals separately from surface and that taxpayer followed general method adopted throughout county in assessing minerals. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Taxpayer who has caused minerals to be separately assessed to himself by collector is not required to institute mandamus proceedings against the supervisors to compel them to enter order approving assessment as made by collector, when taxpayer has information that board of supervisors would not assess minerals separately from surface of land. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Separate mineral assessments made by collector will be presumed to have been approved by board of supervisors where taxes have been collected on such assessments and paid into respective county and state treasuries and there is no definite proof that supervisors did, or did not, enter order approving assessment. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

It could not be shown assessment was made according to law, where fact that notice had been given to taxpayers did not appear on minutes. Gordan v. Smith, 154 Miss. 787, 122 So. 762 (1929).

Where the time for filing the assessment roll was extended, and the board of supervisors failed to enter at their September meeting an increase in the assessment roll, the board could not, the following October, increase an assessment. Board of Supvrs. v. Conner Lumber Co., 107 Miss. 368, 65 So. 466 (1914); Norwood v. Lumber-Mineral Co., 65 So. 468 (Miss. 1914).

The prima facie validity of a tax title was not overcome by showing that the board of supervisors at its July terms extended the time until the August meeting, and that the minutes at the September term were destroyed in part, and that the remaining part did not show approval, especially since Code 1906, § 4306, (Code 1942, § 9796), where objection had not been filed, or, having been filed, had been heard, provides for an appeal by operation of law. Herndon v. Mayfield, 79 Miss. 533, 31 So. 103 (1902).

Where the board of supervisors at its August meeting passed upon particular assessments and adjourned until its September meeting without approving the roll, an appeal will not lie from an order entered at such August meeting directing an assessment before its meeting in September and its approval of the roll, nor will assessments ordered at the August meeting stand approved by operation of law under this section [Code 1942, § 9796]. Madison County v. Frazier, 78 Miss. 880, 29 So. 765 (1901).

An order where the board of supervisors in the first district of a county changes the valuation of certain lands situated in the second district is void, but may be approved by the board at its next meeting in the second district. Yazoo Delta Inv. Co. v. Suddoth, 70 Miss. 416, 12 So. 246 (1893).

§ 27-35-107. Effect of certain omissions of assessors upon validity of assessment.

The failure of the assessor to certify and swear to his assessment roll, or to return it on the day named for its return, shall not affect the validity of the assessment if approved by the board of supervisors.

SOURCES: Codes, 1880, § 500; 1892, § 3783; 1906, § 4293; Hemingway's 1917, § 6926; 1930, § 3173; 1942, § 9797.

JUDICIAL DECISIONS

1. In general.

By reason of this section [Code 1942, § 9797], failure of assessor to attach to assessment roll his certificate and affidavit as required by Code 1942, § 9785, does not affect validity of assessment if roll is duly filed with and approved by board of supervisors. Wilkinson v. Steele, 207 Miss. 701, 43 So. 2d 110 (1949).

A tax title held not void, because assessor did not swear to assessment roll, where the board of supervisors thereafter corrected it and approved the roll. Aultman v. Fleming, 147 Miss. 127, 113 So. 200 (1927).

Law changing the scheme of equalizing assessment and publishing notice thereof, superseded previous laws in conflict therewith and was controlling. Aultman v. Fleming, 147 Miss. 127, 113 So. 200 (1927).

Fact that assessment roll was not marked "filed" by the clerk, could not prevail over undisputed facts showing that it was actually filed with the clerk of the board of supervisors. Aultman v. Fleming, 147 Miss. 127, 113 So. 200 (1927).

A tax title would not be held void for failure to publish notice by the assessor where the record showed publication under a later law controlling such matters. Aultman v. Fleming, 147 Miss. 127, 113 So. 200 (1927).

A taxpayer cannot complain of the failure of the assessor to make affidavit to the correctness of the assessment roll. Planters' Gin & Milling Co. v. City of Greenville, 138 Miss. 876, 103 So. 796 (1925).

This section [Code 1942, § 9797] must be construed in connection with all the other provisions on this subject. McGuire v. Union Inv. Co., 76 Miss. 868, 25 So. 367 (1899).

So construed this section [Code 1942, § 9797] did not invalidate an assessment where, the roll not being returned and no action having been taken at the July meeting, the board of supervisors, on the first Monday of August, extended the time until the first Monday of September, and the roll was filed August 17, and approved by the board without notice to taxpayers on the first Monday of September. McGuire v. Union Inv. Co., 76 Miss. 868, 25 So. 367 (1899).

§ 27-35-109. Changes in rolls duty of chancery clerk.

All changes made in the assessment rolls by the supervisors shall be entered on the assessment roll by its clerk, and all certificates required to be furnished by the board of supervisors relating in any way to the assessment of property shall be made by the chancery clerk.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769q1; 1930, § 3174; 1942, § 9798; Laws, 1920, ch. 323.

ATTORNEY GENERAL OPINIONS

When a lawful change is made on the assessment rolls, the amount of taxes should be recalculated at the millage rate applicable to the original assessment. The amount bid at a tax sale, if in excess of the taxes and costs, is an overbid to be refunded to the purchaser if the land is redeemed by the owner or to be paid to the owner at the time of sale if title matures in the purchaser. In each instance the taxes and all costs should first be satisfied. Tingle, Oct. 2, 1991, A.G. Op. #91-0693.

Amounts of refunds due as a result of change in assessments should be refunded and not credited to other taxes. Tingle, Oct. 2, 1991, A.G. Op. #91-0693.

§ 27-35-111. Supervisors to file recapitulation with tax commission.

Within ten (10) days after the adjournment of the term at which objections of taxpayers to the roll are heard generally in each year, the board of supervisors shall transmit directly to the state tax commission two (2) copies of the recapitulation of their assessment, as equalized on forms to be prescribed by the state tax commission. Should the board of supervisors fail to send in the recapitulation herein provided for, they shall be liable on their bond for such failure and a suit may be brought by the state tax commission.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769f1; 1930, § 3175; 1942, § 9799; Laws, 1920, ch. 323.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Homestead exemptions, see § 27-33-41.

Examination of assessment roll to determine necessity of new assessment, see § 27-35-129.

Equalization by board of supervisors, see § 27-35-131.

JUDICIAL DECISIONS

1. In general.

No appeal will lie prior to the action of the board of supervisors upon the equalization of the state tax commission after its examination of the recapitulation. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

However, an appeal from the action of the supervisors in overruling objections to assessment of property lies, within the time required, following action of the supervisors upon the equalization by the state tax commission after its examination of the recapitulation. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

Where a board of supervisors made a general order approving the original assessment of an objector's land, a recapitulation of the assessment of the property in the county was sent to the state tax commission, which adopted an order equalizing the assessment, and thereafter, at a special meeting, the board of supervisors accepted the equalization made by the commission, whereupon, and within ten days of the adjournment of the special meeting, the objector prosecuted an appeal to the circuit court, and at a meeting about two months later the board of supervisors adopted a further order finally approving the assessment as fixed by the commission, such appeal was not premature, on the theory that an appeal did not lie until after the final action of the board of supervisors. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

It was not necessary, however, that such appeal be taken prior to the final action of the supervisors upon receipt by them of the certificate from the tax commission showing its receipt of an action upon the tax roll. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

If an appeal has been prosecuted following the action of the board of supervisors upon the equalization of assessments by the state tax commission, but the commission after receipt of the roll, shall make further changes therein, the aggrieved party may prosecute a further appeal following the meeting of the supervisors finally approving such changes. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

§ 27-35-113. Department of Revenue to examine recapitulations of assessment rolls; performance standards and parameters for assessment accuracy; assessment ratio studies; proceedings as to counties not in compliance with standards; appeal of order to Board of Tax Appeals; intent of chapter.

(1) It shall be the duty of the Department of Revenue to carefully examine the recapitulations of the assessment rolls of the counties, when received, to compare the assessed valuation of the various classes of property in the respective counties, to investigate and determine if the assessed valuation of any classes of property in any one or more counties of the state is not equal and

uniform with the assessed values fixed upon the same classes of property in other counties of the state, and to ascertain if any class of property in any one or more counties is assessed contrary to law.

(2) The department shall, by regulation, establish performance standards and acceptable parameters for evaluation of the accuracy of assessments. These standards shall include, but not be limited to, the following:

(a) Assessment level: The ratio of assessments to current true value or market value;

(b) Assessment uniformity: The test of uniformity or fairness of individual assessments; and

(c) Assessment equity: The test of price-related bias.

(3) To perform its examination of the recapitulations of the assessment rolls of the counties, the department shall annually conduct assessment/ratio studies of each county or utilize other means, as determined appropriate by the department, to determine if each county's assessment records comply with acceptable performance standards. The department shall send notice of the results of this examination to the assessor and the board of supervisors of each county no later than thirty (30) days after receipt of the board of supervisors' recapitulation. Any county not in compliance with the acceptable performance standards shall, within ninety (90) days from the date of the notice concerning the department's examination of the county's assessments records, adopt and submit to the department for approval a plan for achieving compliance and begin the implementation of the plan so that compliance can be achieved by the second succeeding year's assessment roll after the tax year for which the department's notice of noncompliance with performance standards was issued. Failure to adopt and submit an approved plan for achieving compliance or failure to properly implement and follow an approved plan shall cause the department to withhold the county's homestead exemption reimbursement monies until such time as the county has complied with this provision. In the event the county has not complied with this provision by the end of the state's fiscal year, then the department shall place the funds so held in a special escrow account. All interest shall accrue to the benefit of the county on this account.

(4) The department shall approve the recapitulation of the assessment rolls and the property tax rolls of any county operating under a supervised plan to achieve compliance within the first two (2) roll years as provided for in the paragraph above, notwithstanding that the county may be failing a test or tests of the accuracy or equity of assessment.

(5) Any county failing to achieve such compliance for the second succeeding year's assessment roll as outlined above shall be subject to the following restrictions until such time as said tax rolls come into compliance:

(a) The department shall place into escrow all homestead exemption reimbursements;

(b) The county shall levy and pay over to the department, for purposes of being placed in the escrow account, the proceeds of the one (1) mill levy provided for in Section 27-39-329(1)(b). All interest shall accrue to the benefit of the county on any funds placed in an escrow account; and

(c) The department shall identify the class or classes of property whose assessment level is not in conformity with the regulation of the department governing same, and shall have the authority to adjust and equalize that class or classes of property by, either requiring a fixed percent (1) to be added to the assessed valuation of any class of property in any county found too low; or (2) to be deducted from the assessed valuation of any class of property found too high; in order that the class or classes of property are being assessed in conformity with the department 's regulation.

(6) Once the county achieves compliance with the standard of performance as to assessment level, uniformity and equity as established by the rules and regulations of the Department of Revenue, the department shall release to the county all funds held in escrow on its behalf during the period of noncompliance.

(7) The board of supervisors of any county aggrieved by the decision of the department regarding the department's examination of the recapitulations of its assessment rolls may appeal such decision to the Board of Tax Appeals within thirty (30) days from the date of the notice from the department advising the county of the results of the department's examination of the recapitulation of the assessment rolls of the county. The Board of Tax Appeals shall hear the objections by the board of supervisors and grant whatever relief it deems appropriate; however, the Board of Tax Appeals shall not have the authority to grant relief which is inconsistent with this section. The decision of the Board of Tax Appeals shall be final.

(8) It is the intent of this section and that of this chapter to vest the Department of Revenue with authority to investigate and determine the assessed valuation of classes of property, and to further establish and/or clarify that tax assessors and the boards of supervisors are vested with the absolute authority to investigate and determine the assessed valuations of individual parcels of property located in their particular county in a manner consistent with the laws of this state.

SOURCES: Codes, Hemingway's 1917, § 7765; 1930, § 3176; 1942, § 9800; Laws, 1916, ch. 98; Laws, 1983, ch. 471, § 10; Laws, 1987, ch. 507, § 4; Laws, 1989, ch. 551, § 1; Laws, 1990, ch. 498, § 1; Laws, 1996, ch. 510, § 1; Laws, 2009, ch. 492, § 69, eff from and after July 1, 2010.

Editor's Note — Laws of 1990, ch. 498, § 8, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Specific duties of Department of Revenue with respect to this section, see § 27-3-31.

Department of Revenue to direct what action county must take in order to comply with provisions of this section, see § 27-35-115.

Authority of board of supervisors to appeal decision to Board of Tax Appeals, see § 27-35-117.

Order of Department of Revenue to board of supervisors to correct assessment rolls not to be inconsistent with this section, see § 27-35-127.

County to have 30 days to adjust millage after ordered to make adjustments to tax roll pursuant to this section, see § 27-39-317.

Holding of ad valorem taxes in escrow until county in compliance with property assessment performance standards of this section, see § 27-39-329.

JUDICIAL DECISIONS

1. In general.

In a taxpayer's suit to enjoin the State Tax Commission from approving each county's recapitulation of its assessment rolls until such time as the Commission should comply with its duty to equalize assessments among counties as provided by Code 1972 § 27-35-113 et seq. and Const. 1890 Art 4 § 112, the complaint was sufficient to warrant the conclusion that the Commission's actions result in the collection of taxes "without authority of law" as a prerequisite for injunctive relief under Code 1972 § 11-13-11, where the complaint alleged the Commission's failure over a period of many years to carry out its duty of equalizing assessments and in essence alleged that owners of parcels of land of identical value in different counties may face radically different tax liabilities; no adequate legal remedies were provided by Code 1972 § 27-35-163, which allow a taxpayer to obtain a judicial determination that a particular piece of property has been improperly assessed and to obtain a reduction in the tax, or by Code 1972 § 27-35-93 & § 27-35-119, which prescribe methods by which to determine the proper assessment of the particular piece of property, since plaintiff-taxpayer was not alleging an erroneous computation of the value of his property and was not seeking a new calculation of his tax. Fondren v. State Tax Comm'n, 350 So. 2d 1329 (Miss. 1977).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 706 et seq., 57.

CJS. 84 C.J.S., Taxation § 729 et seq.

§ 27-35-115. Department of Revenue to notify board of supervisors; action on rolls.

When the Department of Revenue has completed its examination of the recapitulations, and within thirty (30) days after the receipt of recapitulations from each of the counties of the state, it shall direct what action the county must take in order to comply with the provisions of Section 27-35-113. On the other hand, if the department finds that the assessment of any county or counties is reasonably equal and uniform with the assessment of other counties, and in proportion to the true value of the property and does not require an increase or decrease in the assessment of any class of property, in order to secure such equality and uniformity, the department, shall approve the assessment roll or rolls, or reproductions thereof, and direct the board of supervisors thereof, to have copies of the rolls made as required by law. Like determinations shall be made by the department with respect to the recapitulations of all the remaining counties as they are received by the department. The department shall send notice of the results of its examination of the recapitulation of the assessment rolls and the action taken in regard the recapitulation by United States mail to the president of the board of supervisors of the county whose recapitulation was examined.

SOURCES: Codes, Hemingway's 1917, § 7765; Hemingway's 1921 Supp. §§ 7769g1, 7769h1; 1930, § 3177; 1942, § 9801; Laws, 1916, ch. 98; Laws, 1920, ch. 323; Laws, 1983, ch. 471, § 11; Laws, 1984, ch. 422, § 2; Laws, 1987, ch. 507, § 5; Laws, 1989, ch. 551, § 2; Laws, 1990, ch. 498, § 2; Laws, 2009, ch. 492, § 70, eff from and after July 1, 2010.

Editor's Note — Laws of 1990, ch. 498, § 8, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

JUDICIAL DECISIONS

1. In general.
2. Appeal by taxpayer.

1. In general.

The board of supervisors has no discretion about making an increase in certain classes of property which the state tax commission has ordered increased. Taylor v. State, 121 Miss. 771, 83 So. 810 (1920).

Notice must be given of a meeting to consider the equalization of taxes, and without the notice the board of supervisors was without jurisdiction to raise the assessment. Robertson v. First Nat'l Bank, 115 Miss. 840, 76 So. 689 (1917).

2. Appeal by taxpayer.

No appeal will lie prior to the action of the board of supervisors upon the equalization of the state tax commission after its examination of recapitulations. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

An appeal does lie, within the time required, following that action by the supervisors. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

Such appeal need not be taken following such action, but may be taken following the final action of the supervisors upon receipt by them of the certificate from the tax commission showing its receipt of an action upon the tax roll. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

If an appeal has been prosecuted following the action of the board of supervisors upon the equalization of assessments by the state tax commission, but the commission after receipt of the roll, shall make further changes therein, the aggrieved party may prosecute a further appeal following the meeting of the supervisors finally approving such changes. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

Where a board of supervisors made a general order approving the original assessment of an objector's land, a recapitulation of the assessment of the property in the county was sent to the state tax commission, which adopted an order equalizing the assessment, and thereafter, at a special meeting, the board of supervisors accepted the equalization made by the commission, whereupon, and within ten days of the adjournment of the special meeting the objector prosecuted an appeal to the circuit court, and at a meeting about two months later the board of supervisors adopted a further order finally approving the assessment as fixed by the commission, such appeal was not premature, on the theory that an appeal did not lie until after the final action of the board of supervisors. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

§ 27-35-117. Duty of board of supervisors to make changes as directed by Department of Revenue; appeal of decision to Board of Tax Appeals.

When the president of the board of supervisors shall receive notice from the Department of Revenue concerning the results of the examination and action taken by the department in regard to the recapitulation of the assessment rolls of his county, he shall immediately call a meeting of the board of supervisors of his county and shall give notice thereof by publication, five (5) days before the date of the meeting and shall set forth in the notice the purpose of the meeting and notifying all taxpayers that at the meeting the board of supervisors will carry out the instructions of the department and that any taxpayer aggrieved by the action of the board may present objections to that action. When the board of supervisors convenes pursuant to the call and notice of the president, it shall proceed to consider the instructions of the Department of Revenue, and if the board be dissatisfied with the decision of the Department of Revenue, the board may, by order, appeal the decision of the department as provided in Section 27-35-113. The members of the board, its attorney, tax assessor and chancery clerk may appear before the Board of Tax Appeals and give evidence with reference to the decision of the department. In its aforesaid order, the board may fix a day for its meeting for the further performance of its duties required under this section. The witnesses shall appear before the Board of Tax Appeals at the location set by the Board of Tax Appeals for the hearing on the board's appeal at the time established by the Board of Tax Appeals, or they shall lose their right to be heard. The compensation and expenses, if any, shall be paid by the board of supervisors of the county affected. The Board of Tax Appeals shall hear the complaints and objections of any board of supervisors and witnesses and may adopt an order modifying or rescinding the decision of the department as the evidence so requires but not inconsistent with the provisions of Section 27-35-113. Unless appealed, the decision of the department when made shall be final and it shall be the duty of the board of supervisors to immediately take the appropriate action in accordance with the instructions of the department. If the department's decision is appealed, the decision of the Board of Tax Appeals shall be final and it shall be the duty of the board of supervisors to immediately take the appropriate action in accordance with the decision of the Board of Tax Appeals.

SOURCES: Codes, Hemingway's 1917, §§ 7766, 7767; Hemingway's 1921 Supp. § 7769h1; 1930, § 3178; 1942, § 9802; Laws, 1916, ch. 98; Laws, 1990, ch. 498, § 3; Laws, 2009, ch. 492, § 71, eff from and after July 1, 2010.

Editor's Note — Laws of 1990, ch. 498, § 8, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Definition of "supplemental roll" for purposes of ad valorem taxes and homestead exemptions, see § 27-33-11.

JUDICIAL DECISIONS

1. In general.

Where a notice of a meeting of board of supervisors for September 30th was published in a newspaper bearing the date line September 26, but the board adjudicated that notice was published on September 25, the minutes of the board of supervisors contain every adjudication of fact necessary to confer jurisdiction upon it to consider the assessment roll on September 30 and those minutes import absolute verity and cannot be impeached by parol evidence. McKenzie v. Smith, 219 Miss. 852, 70 So. 2d 3 (1954).

Board of supervisors is not authorized to pay traveling expenses of its attorney in performance of his duties except those while representing board before state tax commission. Gully v. Bridges, 170 Miss. 891, 156 So. 511 (1934).

§ 27-35-119. Clerk of board of supervisors to mail notice to objecting taxpayer of adjournment of meeting at which final approval of roll entered; appeal from decision of board of supervisors by taxpayer.

(1) The clerk of the board of supervisors shall mail notice of the adjournment of the meeting at which final approval of the roll by the State Tax Commission is entered to any taxpayer who objects to an assessment. Such notice shall be accompanied by an affidavit from the clerk stating the date upon which such notice was mailed.

(2) Any taxpayer who feels aggrieved at the action of the board of supervisors in equalizing his assessments shall have the right of appeal to the circuit court in the manner provided by law, within twenty (20) days after the date the notice is mailed as provided for in subsection (1) of this section.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769h1; 1930, § 3179; 1942, § 9803; Laws, 1920, ch. 323; Laws, 2002, ch. 498, § 2, eff from and after July 1, 2002.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Appeal from tax assessments, see § 11-51-77.

Appeal right of municipal taxpayer aggrieved by action of board of supervisors in equalizing his assessment, see § 21-33-10.

Appeal by persons assessed for former years, see § 27-35-157.

Appeals from orders of Board of Tax Appeals, see § 27-35-163.

JUDICIAL DECISIONS

1. In general.
2. Bond for appeal.
3. Time for appeal.

1. In general.

Taxpayers seeking to challenge the authority of the Board of Supervisors in letting appraisal contracts under § 27-35-101 were not entitled to injunctive relief under § 11-13-11 where the taxpayers had a complete and adequate remedy at law through § 27-35-119. Lewis v. Mass Appraisal Servs., Inc., 396 So. 2d 35 (Miss. 1981).

In a taxpayer's suit to enjoin the State Tax Commission from approving each county's recapitulation of its assessment rolls until such time as the Commission should comply with its duty to equalize assessments among counties as provided by Code 1972 §§ 27-35-113 et seq. and Const. 1890 Art 4 § 112, the complaint was sufficient to warrant the conclusion that the Commission's actions result in the collection of taxes "without authority of law" as a prerequisite for injunctive relief under Code 1972 § 11-13-11, where the complaint alleged the Commission's failure over a period of many years to carry out its duty of equalizing assessments and in essence alleged that owners of parcels of land of identical value in different counties may face radically different tax liabilities; no adequate legal remedies were provided by Code 1972 § 27-35-163, which allow a taxpayer to obtain a judicial determination that a particular piece of property has been improperly assessed and to obtain a reduction in the tax, or by Code 1972 § 27-35-93 & § 27-35-119, which prescribe methods by which to determine the proper assessment of the particular piece of property, since plaintiff-taxpayer was not alleging an erroneous computation of the value of his property and was not seeking a new calculation of his tax. Fondren v. State Tax Comm'n, 350 So. 2d 1329 (Miss. 1977).

In view of its appeal from assessments, national bank was not entitled to injunctive relief in federal court as against tax on its shares since the assessments had not become final, but were in the process of settlement in the Mississippi courts in a proceeding which though partially judicial was also essentially administrative in character. First Nat'l Bank v. Gildart, 64 F.2d 873 (5th Cir. Miss. 1933), cert. denied, 290 U.S. 631, 54 S. Ct. 50, 78 L. Ed. 549 (1933).

Since the just value as compared with the assessment of like property is determined from the taxpayer's entire assessment, a petition on appeal from an order approving assessment of personal property which only sets out amount of assessment with the copy of assessment, is held a sufficient bill of particulars. Knox v. Southern Paper Co., 143 Miss. 870, 108 So. 288 (1926).

2. Bond for appeal.

A bond for appeal from the assessment of the board of supervisors executed a few days before the final order is made is good, and it was error for the lower court to dismiss such an appeal. Moller-Vandenboom Lumber Co. v. Board of Supvrs., 138 Miss. 289, 103 So. 81 (1925).

3. Time for appeal.

No appeal will lie prior to the action of the board of supervisors upon the equalization of the state tax commission after its examination of the recapitulation. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

However, an appeal from the action of the supervisors in overruling objections to assessment of property lies, within the time required, following action of the supervisors upon the equalization by the state tax commission after its examination of the recapitulation. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

Where a board of supervisors made a general order approving the original assessment of an objector's land, a recapitulation of the assessment of the property in the county was sent to the state tax commission, which adopted an order equalizing the assessment, and thereafter, at a special meeting, the board of supervisors accepted the equalization made by the commission, whereupon, and within ten days of the adjournment of the special meeting the objector prosecuted an appeal to the circuit court, and at a meeting about two months later the board of supervisors adopted a further order finally approving the assessment as fixed by the commission, such appeal was not premature, on the theory that an appeal did not lie until after the final action of the board of supervisors. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

It was not necessary, however, that such appeal be taken prior to the final action of the supervisors upon receipt by them of the certificate from the tax commission showing its receipt of an action upon the tax roll. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

If an appeal has been prosecuted following the action of the board of supervisors upon the equalization of assessments by the state tax commission, but the commission, after receipt of the roll, shall make further changes therein, the aggrieved party may prosecute a further appeal following the meeting of the supervisors finally approving such changes. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

Attorney general, aggrieved by decision of board of supervisors equalizing assessment roll, need not appeal till after approval of assessment roll. Edward Hines Yellow Pine Trustees v. State, 146 Miss. 101, 112 So. 12 (1927), but see Ditto v. Hinds County, 665 So. 2d 878 (Miss. 1995).

It takes the approval of the board of supervisors after the assessment rolls have been ordered changed by the state tax commission to make the assessment final. Marathon Lumber Co. v. State, 139 Miss. 125, 103 So. 798 (1925).

An appeal can only be taken from the order finally approving the assessment after its approval by the state tax commission. State ex rel. Knox v. Wyoming Mfg. Co., 138 Miss. 249, 103 So. 11 (1925).

There was no right of appeal from an order of the board of supervisors equalizing assessments until after action thereon by the state tax commission, since the order was not final, but interlocutory. Moller-Vandenboom Lumber Co. v. Board of Supvrs., 135 Miss. 249, 99 So. 823 (1924); Wilkinson County v. Foster Creek Lumber & Mfg. Co., 135 Miss. 616, 100 So. 2 (1924).

An appeal is not required from an assessment until it is finally approved by the state tax commission. Mobile & O.R. Co. v. Board of Supvrs., 124 Miss. 655, 87 So. 139 (1921).

ATTORNEY GENERAL OPINIONS

Any corporation that is aggrieved by action of assessor in exercise of duty or by action of board of supervisors in equalizing assessments and approving roll shall have right to appeal board's action to circuit court as provided by Miss. Code Section 27-35-119. Wetzel, May 19, 1993, A.G. Op. #93-0253.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 718 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 11 et seq. (judicial relief relating to equalization, correction, and review of assessment).

CJS. 84 C.J.S., Taxation §§ 720-728.

§ 27-35-121. Effect of appeal.

In case of an appeal from the judgment of the board of supervisors in the matter of an assessment, the appeal shall not delay the collection of taxes due by the assessment as approved. If such taxes be collected before a final disposition of the appeal, and the judgment be in favor of the person appealing, in whole or in part, as to the matter in dispute, any money improperly collected from him for taxes, as shown by the judgment, shall be refunded to him by the state and county respectively, if they have received the money; and, if it shall not have been paid over, the tax collector receiving it shall refund it to him. His claim, if against the state, shall be audited by the auditor, and a warrant issued for the amount after the auditor shall have submitted the matter to the attorney general, and obtained his opinion that it is a legal demand against the state; and the board of supervisors shall, after such allowance by the auditor, audit and allow the claim of the party against the county. If the case be decided in favor of the party appealing while the collector is proceeding with the collection of taxes, he shall conform his action to the judgment.

SOURCES: Codes, 1880, § 504; 1892, § 3797; 1906, § 4310; Hemingway's 1917, § 6944; 1930, § 3180; 1942, § 9804.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

JUDICIAL DECISIONS

1. In general.
2. Decision on appeal.

1. In general.

In view of its appeal from assessments, national bank was not entitled to injunctive relief in federal court as against tax on its shares, since the assessments had not become final, but were in the process of settlement in the Mississippi courts in a proceeding which though partially judicial was also essentially administrative in character. First Nat'l Bank v. Gildart, 64 F.2d 873 (5th Cir. Miss. 1933), cert. denied, 290 U.S. 631, 54 S. Ct. 50, 78 L. Ed. 549 (1933).

The decision of a board of supervisors approving an assessment in conformity to law can only be questioned on direct appeal from such order. Darnell v. Johnston, 109 Miss. 570, 68 So. 780 (1915).

An appeal under this section [Code 1942, § 9804] does not supersede or delay the collection of the taxes. Board of Supvrs. v. Tate, 78 Miss. 294, 29 So. 74 (1901).

2. Decision on appeal.

Where court reduced assessed valuation on appeal, tax collector was entitled to ten per cent penalty only in so far as assessment was legal. McKenzie v. Adams-Banks Lumber Co., 157 Miss. 482, 128 So. 334 (1930).

Where appeal is decided in taxpayer's favor, taxpayer is entitled to refund of taxes illegally collected and also ten per cent penalty collected. McKenzie v. Adams-Banks Lumber Co., 157 Miss. 482, 128 So. 334 (1930).

The circuit court on appeal from an order increasing assessment, where taxes have been paid on said assessment, cannot, after reducing said assessment, order a refund of said taxes. Board of Supvrs. v.

Citizens' Nat'l Bank, 119 Miss. 165, 80 So. 530 (1919).

§ 27-35-123. Completion of rolls; clerk to prepare and file copies; penalty for failure.

When the roll is finally completed by the board of supervisors, as provided by law and in accordance with the instructions of the state tax commission, the clerk shall make two (2) fair and correct copies, or reproductions of such copies, of each roll, but in counties having two (2) judicial districts, two (2) for each district, as examined and corrected, if it be corrected. He shall transmit one (1) copy of each roll to the state tax commission within thirty (30) days after the final approval of the rolls by the board under the orders of the state tax commission and he shall be liable on his bond for failure to transmit same by that date. He shall deliver the other copy of each roll to the tax collector upon receipt of approval of the roll by the state tax commission. He shall retain and carefully preserve the original rolls as a public record in his office. The clerk shall make the proper extensions of the total amount of property assessed to every taxpayer, and shall add truly and correctly every page of said copies and carry the results thereof to the recapitulation. He shall add said recapitulation and shall certify to the truth and correctness of all calculations in said copies.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769i1; 1930, § 3181; 1942, § 9805; Laws, 1920, ch. 323; Laws, 1984, ch. 422, § 3, eff from and after July 1, 1984.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Clerk's compensation for copying assessment rolls, see § 25-3-21.

Effect of theft, loss or destruction of assessment rolls, see § 25-55-15.

Definition of "supplemental roll" for purposes of ad valorem taxes and homestead exemptions, see § 27-33-11.

Homestead exemptions, see § 27-33-35.

Railroad assessment rolls, see § 27-35-315.

Certification of county taxes, see § 27-39-319.

JUDICIAL DECISIONS

1. In general.

The roll in the hands of the collector is his authority to make sales and conveyances of lands for nonpayment of taxes thereon. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Tax sale purporting to convey entire property does not convey to tax purchaser minerals in the land separately owned and separately assessed by tax collector, when the tax roll in hands of collector showed the separate assessment, and the roll, as well as copies of tax receipts, disclosed fact that taxes on minerals for two years before sale had actually been paid. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107

(1948).

§ 27-35-125. Failure of clerk to make copies; other person appointed.

If the clerk fail to make out, certify, and transmit the copies of the assessment rolls as required, he shall forfeit the sum of Five Hundred Dollars ($500.00), to be recovered by action or motion against him and the sureties on his official bond, to be prosecuted by the state; and the board of supervisors shall appoint some other person to make and certify the copies, who shall receive the compensation provided for the clerk. The auditor and president of the board of supervisors shall certify the failure to the district attorney.

SOURCES: Codes, 1857, ch. 3, art 27; 1871, § 1686; 1880, § 506; 1892, § 3798; 1906, § 4311; Hemingway's 1917, § 6945; 1930, § 3182; 1942, § 9806.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Definition of "supplemental roll" for purposes of ad valorem taxes and homestead exemptions, see § 27-33-11.

§ 27-35-127. Rolls to be examined by commission; corrections and approval.

On receipt of the assessment rolls, or reproductions of such rolls, real or personal, the State Tax Commission shall examine them, and if it find a roll incorrect in any particular it may return it to the board of supervisors for correction; and the board shall cause the same to be corrected in accordance with the recommendations of the commission. However, the order of the commission shall not be inconsistent with Section 27-35-113. The assessor shall receive no salary after the August meeting of the board of supervisors until his roll or rolls have been approved by the commission unless the commission certify that the assessor is not in default with reference to making and filing the assessment rolls; nor shall the members of the board of supervisors receive compensation for their official services, after the August meeting in each year, until the assessment rolls for the year have been approved by the commission, or until the commission shall certify that the board is not in default concerning the assessment rolls. In all cases the certificate of the commission shall be entered on the minutes of the board.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769m1; 1930, § 3183; 1942, § 9807; Laws, 1920, ch. 323; Laws, 1984, ch. 422, § 4; Laws, 1990, ch. 498, § 5, eff from and after July 1, 1990.

Editor's Note — Laws of 1990, ch. 498, § 8, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Salaries of tax assessors, see §§ 25-3-3 and 25-3-7.

Forfeiture of assessor's salary for failure to include whole county, see § 27-35-73.

Assessment of persons escaping taxation, see § 27-35-155.

JUDICIAL DECISIONS

1. In general.

An appeal from action of county supervisors in overruling objections to assessment of property need not be taken following action of the supervisors upon the equalization by the state tax commission after its examination of the recapitulation, but may be taken following the final action of the supervisors upon receipt by them of the certificate from the tax commission showing its receipt of and action upon the tax roll. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

If an appeal has been prosecuted following the action of the board of supervisors upon the equalization of assessments by the state tax commission, but the commission after receipt of the roll, shall make further changes therein, the aggrieved party may prosecute a further appeal following the meeting of the supervisors finally approving such changes. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

Where a board of supervisors made a general order approving the original assessment of an objector's land, a recapitulation of the assessment of the property in the county was sent to the state tax commission, which adopted an order equalizing the assessment, and thereafter, at a special meeting, the board of supervisors accepted the equalization made by the commission, whereupon, and within ten days of the adjournment of the special meeting the objector prosecuted an appeal to the circuit court, and at a meeting about two months later the board of supervisors adopted a further order finally approving the assessment as fixed by the commission, such appeal was not premature, on the theory that an appeal did not lie until after the final action of the board of supervisors. Evans v. Board of Supvrs., 192 Miss. 188, 5 So. 2d 224 (1941).

§ 27-35-129. Board to examine roll and determine if new assessment necessary.

The board of supervisors, at its July meeting, shall carefully examine the assessment roll, or rolls, returned by the tax assessor and shall then decide if a new assessment be necessary. If it be found that the assessor is incapable, or that his assessment is so imperfect that it ought not to be approved, even if objections be not filed, the board may appoint some suitable person to proceed immediately to make the assessment. The board of supervisors shall in such case adopt an order setting forth the true facts and conditions and the time necessary for making of a new assessment roll, or rolls, and shall certify the order to the Department of Revenue. The Department of Revenue shall, upon receipt of the certificate from the board of supervisors, determine and notify the board of supervisors when the roll, or rolls, shall be filed, the time for equalization by the board of supervisors, the giving of notice to taxpayers and the time when objections to the roll, or rolls, shall be heard and determined by the board of supervisors. The person appointed to make the assessment shall proceed immediately to make the assessment in the same manner and with the same powers of the tax assessor when assessments are made at the time provided by law, and shall prepare and file the assessment roll, or rolls, within the time prescribed by the order of the department. The person so appointed and discharging the duty shall be allowed the compensation allowed by law to the assessor for like services, and shall have the same deputies allowed by law to the tax assessor. The board of supervisors shall require of the persons appointed the same bond as is required of the tax assessor. The roll, or rolls, made under the provisions of this section shall be the legal assessment roll and the old one shall be thereby annulled.

SOURCES: Codes, 1880, § 501; 1892, § 3785; 1906, § 4294; Hemingway's 1917, § 6928; 1930, § 3184; 1942, § 9808; Laws, 1926, ch. 210; Laws, 2009, ch. 492, § 72, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Extension of time for filing assessment rolls, see § 27-35-81.

Notice to taxpayer of supervisors' equalization of rolls, see § 27-35-83.
Supervisors' hearing on objections to rolls, see § 27-35-89.
Filing of supervisors' recapitulation with Department of Revenue, see § 27-35-111.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 726, 735 et seq.

CJS. 84 C.J.S., Taxation § 852.

§ 27-35-131. Board of supervisors to equalize assessments.

An assessment roll, or rolls, made by a person appointed by the board of supervisors for that purpose, as provided in Section 27-35-129 shall be made and returned at the time prescribed by the order of the state tax commission, and at the time designated by the order of the state tax commission, the board shall immediately assemble, receive and examine the same, and shall do all things which the law directs to be done if the roll had been received and equalized at the July meeting, except as to the time. The board of supervisors shall have power to increase or decrease the assessment of any property or person and shall cause to be added to the roll by the tax assessor, or the person appointed, any person or property omitted therefrom. Such equalization shall be completed within ten (10) days of the time designated by the state tax commission for the hearing of objections, and shall immediately, by newspaper publication, give notice that such roll, or rolls, so equalized are ready and open for inspection and examination by any taxpayer. The notice required to be given shall designate the time and place where objections to the assessments will be heard and determined. All objections to the assessment of property, as shown by such roll, or rolls, must be made in writing and filed by the taxpayers during the first three (3) days of the meeting and the board shall hear and determine all objections, and shall sit from day to day until the same shall have been disposed of and all corrections made. At the meeting when such objections are heard, the board shall have the power to increase or decrease the assessment of any taxpayer and to add to the assessment roll any person or property found to be omitted therefrom; provided, that when any person or property is added to the roll, or where any assessment is increased, the board shall require the clerk to give notice by mail to such person designating a future date when objections to such assessment or increase will be heard and determined. Such time shall be not less than ten (10) days nor more than fifteen (15) days. When all objections to such roll have been heard and determined, the board of supervisors shall forward to the state tax commission, as provided by law, a recapitulation of said roll, or rolls; and the roll, or rolls, shall be dealt with in all respects as now provided by law for rolls made and filed on the first Monday of July, except as to the time.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art 17 (23); 1857, ch. 3, art 28; 1871, § 1687; 1880, § 502; 1892, § 3786; 1906, § 4295;Hemingway's 1917, § 6929; 1930, § 3185; 1942, § 9809; Laws, 1926, ch. 210.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Time for filing assessment roll, see § 27-35-81.

Procedure for equalization of rolls, see § 27-35-87.

Objections to assessment rolls, see §§ 27-35-89, 27-35-93.

Supervisors' recapitulation with Department of Revenue, see § 27-35-111.

JUDICIAL DECISIONS

1. In general.

The failure of the board of supervisors, at a special meeting called pursuant to an order of the state tax commission, and upon due notice, for the purpose of increasing the assessed value of certain classes of property on the rolls, to set out in the minutes of the order of the state tax commission the percentages "shown on the reverse side" thereof did not render the order of the board of supervisors increasing tax assessments in accordance with the order of the state tax commission void, where it set out what appeared on the face of the order made by the state tax commission and the board did recite and adjudicate the percentages of increase which had been ordered by the state tax commission, in view of the fact that the law only required that the order of the state tax commission should be spread on its minutes and it was only necessary that the substance thereof should be set forth on the minutes of the board of supervisors to show its authority for making the increases required. The essential and controlling features of the tax commission's order were set forth on the minutes of the board of supervisors sufficient to recite the necessary jurisdictional facts to authorize the board to make the increases in percentages mentioned. Day Bros. v. Board of Supvrs., 183 Miss. 240, 184 So. 453 (1938).

The notice by mail mentioned in this section [Code 1942, § 9809] is required only where a new assessment is found to be necessary when the board of supervisors examines the assessment roll at its July meeting, due to the assessor being incapable or his assessment being so imperfect that it should not be approved, whether objections thereto be filed or not, and where the board is authorized to appoint some suitable person to thereafter proceed to make the new assessment as provided for in Code 1942, § 9808, and has no application to an increase of assessments by way of equalization of assessments. Day Bros. v. Board of Supvrs., 183 Miss. 240, 184 So. 453 (1938).

An assessment was not invalid, where, the roll not having been returned and no action having been taken at the July meeting, the board of supervisors on the first Monday of August extended the time until the first Monday of September, and the roll was filed August 17, and approved by the board without notice to taxpayers on the first Monday of September. McGuire v. Union Inv. Co., 76 Miss. 868, 25 So. 367 (1899).

If the board failed to "immediately assemble," the taxpayer cannot complain. Wolfe v. Murphy, 60 Miss. 1 (1882).

If a new assessment be ordered, the old one is thereby abandoned. Stovall v. Connor, 58 Miss. 138 (1880).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 706 et seq., 57.

CJS. 84 C.J.S., Taxation §§ 704 et seq.

§ 27-35-133. Validation of land roll; correction and revision.

The board of supervisors of any county is hereby authorized to declare and proclaim the current land assessment roll to be in force and effect for one (1) additional year, when in the opinion of the board, the roll is in satisfactory condition, and may be corrected by the board so that the assessment therein will be uniform and equal with the assessment of other property in the county, and will not cause financial loss to the county, nor injustice to any individual taxpayer. The board shall enter an order on its minutes at its January meeting in the year following the year in which the land assessment roll was made, declaring that a new land assessment will not be made for the current year, and that the latest land roll will be corrected and revised, and approved as the land assessment for that year. The board shall require its clerk to make and send promptly by mail a certified copy of the order to the county tax assessor and to the state tax commission, and a copy of the order shall be published in the form of a notice to the taxpayers of the county. It shall be the duty of the tax commission to furnish the assessor, the clerk, and the board with all needed sheets and other forms for correcting and approving the roll as so corrected; but new binders will not be used.

SOURCES: Codes, 1892, § 3790; 1906, § 4299; Hemingway's 1917, § 6933; 1930, § 3186; 1942, § 9810; Laws, 1899, ch. 31; Laws, 1918, ch. 136; Laws, 1950, ch. 298, § 3.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

JUDICIAL DECISIONS

1. In general.

The assessor making reassessment of lands should be paid out of the county treasury and not out of the state treasury. Brook v. Wilson, 120 Miss. 255, 82 So. 74 (1919).

If a new assessment be ordered, the old one is thereby abandoned. Stovall v. Connor, 58 Miss. 138 (1880).

§ 27-35-135. Consideration of land roll; procedure as to changes.

When the land roll is ordered by the board to be declared in force for the year following the year in which it was made, the assessor shall assemble, for presentation to the board, all necessary information which is obtainable with respect to the taxable real property in the county, and shall present to the board at its July meeting his recommendation of the changes which include the addition of buildings not on the roll, changes in ownership, subdivisions of tracts of land, and destruction of buildings, and other information which is pertinent to the circumstances enumerated in Sections 27-35-143 and 27-35-

147, or as may be requested by the board, to enable it to make such changes as will cause the taxes to be charged to the person or property liable therefor, and to fix the assessments of property according to the value thereof, to the end that all property shall be assessed and taxed uniformly and equally. The board shall proceed to consider the land assessment roll along with the personal property assessment roll as is required by Sections 27-35-83 and 27-35-87, Mississippi Code of 1972, in the same manner as is done in the year in which the land roll is made. The board shall make a record of its changes, and if expedient the board may prepare, or have prepared, new pages to replace any page or pages in the roll where changes are so numerous as to cause confusion and uncertainty in the description of any property and of any individual assessment. The pages which are replaced shall be marked void by the clerk, who shall place the new pages in the roll at the place in the roll immediately following the pages marked void, and shall certify copies of the new pages, one (1) to the tax collector, and one (1) to the tax commission. The tax collector and the tax commission shall place the pages received in their respective copies of the roll.

The board shall publish a notice to the taxpayers as required by Section 27-35-83 that the roll is open for inspection and shall meet and hear objections as provided by Sections 27-35-89 and 27-35-93. When all objections have been heard, the board shall approve finally, by order, the roll as so corrected and revised, and the clerk of the board shall prepare a new recapitulation and a new certificate for the corrected roll and deliver one (1) copy to the tax collector and one (1) copy to the state tax commission. The roll so approved shall be the legal roll, and the values thus fixed shall be the legal value of the property described for the payment of taxes, and it shall be the duty of each and every taxpayer to pay his taxes thereon according to such value.

SOURCES: Codes, 1906, § 4301; Hemingway's 1917, § 6935; 1930, § 3187; 1942, § 9811; Laws, 1898, p 50; Laws, 1918, ch. 136; Laws, 1950, ch. 298, § 4.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Notice to taxpayer of equalization of rolls, see § 27-35-83.

Procedure for equalization of rolls, see § 27-35-87.

Equalization of rolls, see § 27-35-131.

Changes in assessments, see §§ 27-35-143 through 27-35-149.

JUDICIAL DECISIONS

1. In general.

Where land assessment rolls which had been equalized and approved were destroyed in courthouse fire prior to filing of a copy thereof with the state tax commission and no copy of the rolls was left in existence, notice of special meeting of board of supervisors to consider "the matter of assessment rolls" did not constitute sufficient notice to property owners that reassessment would be ordered at that meeting so that such reassessment, as so ordered, and tax sales held thereunder were void, particularly in view of the facts that the reassessment was equalized at a subsequent meeting without having been designated by the board as the time for such equalization, and approved at a later special meeting, without proper notice to the taxpayers as to what was to be done at either the meeting at which the reassessment was equalized or the meeting at which the objections could be heard and the rolls approved. State v. Butler, 197 Miss. 218, 21 So. 2d 650 (1945).

§ 27-35-137. Compensation for reassessment.

Upon the return and approval by the board of such land roll, the board may allow the assessor, or person appointed by the board to make such reassessment, such compensation as allowed for a regular assessment. The clerk shall receive the same fee for making copies of said roll as is allowed for making copies of a regular assessment.

SOURCES: Codes, 1906, § 4300; Hemingway's 1917, § 6934; 1930, § 3188; 1942, § 9812; Laws, 1898, ch. 31; Laws, 1918, ch. 136.

Cross References — Clerk's compensation for copying assessment rolls, see § 25-3-21.

JUDICIAL DECISIONS

1. In general.

The compensation due the county assessor for special assessments upon land is payable out of the county treasury and not out of the state treasury. Brook v. Wilson, 120 Miss. 255, 82 So. 74 (1919).

§ 27-35-139. Correction of assessments between county lines.

Boards of supervisors of adjoining counties may employ a person or persons to assess and correct assessments between county lines. For such services they may pay a compensation not exceeding Five Dollars ($5.00) per day. The assessor may do this work, and, if deemed necessary, they may employ a surveyor to aid in its performance.

SOURCES: Codes, 1906, § 4302; Hemingway's 1917, § 6936; 1930, § 3189; 1942, § 9813; Laws, 1898, p 50.

§ 27-35-141. Board may have new assessment roll made when same destroyed.

In case of the destruction or mutilation of an assessment roll, or reproduction thereof, the board of supervisors may have duplicate copies made from copies on file in the office of the state tax commission, or in the office of the chancery clerk; and when certified to be correct by the clerk, the copy shall be treated and recognized as the legal roll. All orders of the board of supervisors adopted before the destruction or mutilation of such roll, either increasing or decreasing the assessment of any property, shall apply to the copy of such roll made as herein provided. In case an assessment roll, or rolls, be lost, destroyed, or stolen before the copies have been made and filed as provided by law, the board of supervisors shall order a new assessment made and a new roll, or rolls, prepared in the manner required by law when made at the regular time, and the board of supervisors and all other officers, either county or state, shall perform all duties in reference to said roll, or rolls, as if made at the regular time. The tax assessor, board of supervisors, and chancery clerk, shall receive compensation for making a new roll as herein provided in the same amount as required to be paid if made at the regular time. The state tax commission shall furnish blank rolls when requested by a board of supervisors.

SOURCES: Codes, Hemingway's 1921 Supp § 7769n1; 1930, § 3190; 1942, § 9814; Laws, 1920, ch. 323; Laws, 1926, ch. 214; Laws, 1984, ch. 422, § 5, eff from and after July 1, 1984.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Effect of theft, loss or destruction of assessment rolls, see § 25-55-15.

Further procedure for change of assessment, see § 27-35-149.

JUDICIAL DECISIONS

1. In general.

Where land assessment rolls which had been equalized and approved were destroyed in courthouse fire prior to filing of a copy thereof with the state tax commission and no copy of the rolls was left in existence, notice of special meeting of county board of supervisors to consider "the matter of assessment rolls" did not constitute sufficient notice to property owners that reassessment would be ordered at that meeting so that such reassessment and tax sales held thereunder were void, particularly in view of the facts that the reassessment was equalized at a subsequent meeting without having been designated by the board as the time for such equalization, and approved at a later special meeting, without proper notice to the taxpayers as to what was to be done at either the meeting at which the reassessment was equalized or the meeting at which the objections could be heard and the rolls approved. State v. Butler, 197 Miss. 218, 21 So. 2d 650 (1945).

§ 27-35-143. Change of assessment in certain cases.

The board of supervisors of each county shall have power, upon application of the party interested, or by the assessor on behalf of such party, or otherwise as prescribed in Sections 27-35-145 through 27-35-149, to change, cancel or decrease an assessment in the manner herein provided at any time after the assessment roll containing such assessment has been finally approved by the State Tax Commission, and prior to the last Monday in August next, under the following circumstances and no other:

1. When the same property has been assessed more than once to one or more persons.
2. When a clerical error has been made in transcribing the assessment from the tax list to the assessment roll, or from the assessment roll to the

copies, or in amending the original assessment roll, in making the equalization of assessments, or in carrying out the instructions of the State Tax Commission.

3. When an error in addition or multiplication has been made in the compilation of the tax list, roll or copy of the roll.

4. When there is an assessment of property which never existed, or was not owned by or in the possession of the party to whom assessed, on the next preceding tax lien date.

5. When the assessment is in the name of another than the owner of the property on the next preceding tax lien date.

6. When the assessment is so indefinite as to give a vague or imperfect description of the property assessed.

7. When the property assessed is nontaxable, or was not subject to taxation on the next preceding tax lien date.

8. When the property is not liable to a special district tax levy for which it has been assessed.

9. When the property, after the next preceding tax lien date, but before the payment of taxes due thereon, has ceased to exist, on account of death or destruction by fire, explosion, storm, flood, earthquake, lightning, or other inevitable accident or act of Providence; or has depreciated in value on account of any such accident or occurrence as the foregoing.

Provided, however, that where property has been insured the amount collected as insurance by reason of such loss shall be taken into account by the board in reducing the assessment, or refunding any tax payment thereon.

10. When the assessment does not show the correct number of acres, actually in the property described, or the correct quantity of any property.

11. When lands have been assessed and incorrectly classified; or when buildings and improvements have been assessed which were not on the land, at the preceding tax lien date; or where the buildings and improvements, at the preceding tax lien date, were exempt from assessment and taxation.

12. When the property has been assessed for more than its actual value; but in such cases the board shall require proof, under oath, of such excessive assessment by two (2) or more competent witnesses who know of their own personal knowledge that the property is assessed for a higher sum than its true value.

13. When the property has been assessed as subject to state taxes and is exempt; or when the property has been assessed as subject to county and district taxes and is exempt from such taxes.

14. When buildings and improvements have been assessed with the land, but are owned by someone other than the owner of the land.

SOURCES: Codes, 1857, ch. 3, art 29; 1871, § 1688; 1880, § 507; 1892, § 3799; 1906, § 4312; Hemingway's 1917, § 6946; 1930, § 3191; 1942, § 9815; Laws, 1934, ch. 187; Laws, 1950, ch. 298, § 5; Laws, 1993, ch. 466, § 1, eff from and after July 1, 1993.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Changes in municipal assessments, see § 21-33-43.

JUDICIAL DECISIONS

1. In general.
2. Construction and application.
3. —Timing.
4. —Banks.
5. —Applicability to personal property.
6. Destruction or deterioration by accident or act of providence; insurance.
7. Timber lands; removal of timber.

1. In general.

This section [Code 1942, § 9815] is constitutional. Board of Supvrs. v. Tate, 78 Miss. 294, 29 So. 74 (1901).

2. Construction and application.

Owner of real property was not entitled to a reduction in the assessment of that property where it had failed to comply with § 27-35-143(12) by not producing competent evidence that its property had been assessed for a higher sum than its true value. Knights & Daughters of Tabor v. City of Mound Bayou, 404 So. 2d 548 (Miss. 1981).

The actual or true value of property, assessment in excess of which entitles a taxpayer to relief under this section [Code 1942, § 9815], is its market value and not the cost of construction. City of Cleveland v. T.V. Cable Co., 239 Miss. 184, 121 So. 2d 862 (1960).

Before the state tax commission could lawfully reject or disapprove an order of the board of supervisors making a reduction of an ad valorem assessment on real estate, the commission must have before it competent evidence to the effect that the order of the board of supervisors is in fact erroneous. Stuart v. Board of Supvrs., 195 Miss. 1, 11 So. 2d 212 (1943).

The effect of such an unlawful rejection of the order of a board of supervisors reducing an ad valorem assessment of real estate was to leave the order of the board of supervisors, made in response to the petition of the taxpayer, in full effect, and the taxpayer was entitled to equitable relief, as against the contention that upon receipt of the tax commission order disapproving the decision of the board of supervisors, the board should have entered an order denying the taxpayer's petition so that the taxpayer could appeal at law from such order, since the statute made no provision for any such action on the part of the board of supervisors. Stuart v. Board of Supvrs., 195 Miss. 1, 11 So. 2d 212 (1943).

Where the state tax commission rejected and and disapproved such order without referring to any evidence whatsoever, without hearing or notice to the taxpayer, and denying the taxpayer's request to present the evidence on which the board's order was based, order of rejection and disapproval was void and in violation of the constitutional provision that no property shall be assessed for taxes at more than its actual value. Stuart v. Board of Supvrs., 195 Miss. 1, 11 So. 2d 212 (1943).

Since a taxpayer would have been entitled to an appeal to the circuit court and trial de novo therein from an unfavorable decision of the board of supervisors on the question of reduction of ad valorem assessment on his property, and the jury therein would be governed by an instruction that no specific parcel of real estate may be assessed at more than its actual value, the right of the taxpayer in this respect could not be less with respect to a review by the state tax commission of a favorable decision of the board of supervisors, the state tax commission being subject to the same instruction. Stuart v. Board of Supvrs., 195 Miss. 1, 11 So. 2d 212 (1943).

Where owner's option to federal government to purchase land on or before December 31, 1934, provided that payment should be made upon approval of title, and option was duly accepted but title was not approved until after January 1, 1935, 1935 taxes held assessable to owner notwithstanding government entered into possession of land pending acceptance of conveyance thereof. Southern Forest Land Co. v. Amite County, 176 Miss. 130, 168 So. 286 (1936).

Where petition alleged petitioner owned no personal property, petitioner could not have assessment stricken from rolls under statute relied on. George County Bridge Co. v. Board of Supvrs., 158 Miss. 501, 130 So. 488 (1930).

Order not reviewable by state tax commission, when made under this section [Code 1942, § 9815]. Board of Supvrs. v. Laurel Mills, 130 Miss. 454, 94 So. 448 (1923).

The board of supervisors may correct an assessment on application of the party interested where there is a known overvaluation of property assessed and a clerical error in the assessment roll. Board of Supvrs. v. Dale, 110 Miss. 671, 70 So. 828 (1916).

3. —Timing.

Application may be made for change in assessment roll at any time before taxes have been collected or distress proceedings taken. Franklin County v. Homochitto Lumber Co., 164 Miss. 654, 146 So. 304 (1933).

The board of supervisors may change assessed value of property for reasons which could have been brought to its attention before the assessment roll was approved. State ex rel. Knox v. Board of Supvrs., 146 Miss. 345, 111 So. 594 (1927).

This section [Code 1942, § 9815] applies to personal as well as real property. Jennings v. Board of Supvrs., 79 Miss. 523, 31 So. 107 (1901); Kuhn Bros. v. Warren County, 98 Miss. 879, 54 So. 442 (1911).

An owner alleging that he had repeatedly offered his lands for sale at one-half the assessed valuation without alleging that the lands were overassessed by accident and without showing that he had made a timely objection to the assessment, was not entitled to the reduction authorized by the statute. Forsdick v. Board of Supvrs., 25 So. 294 (Miss. 1899).

4. —Banks.

Where bank voluntarily paid taxes and did not avail itself of statutory remedies to cure alleged errors, receiver of bank held not entitled to mandamus to compel attorney general to approve refund. Selig v. Price, 167 Miss. 612, 142 So. 504 (1932).

Capital and surplus of bank for taxation purposes is difference between aggregate true value of real estate and aggregate true value of all assets; where value of bank's land is deducted from total value of all its assets as shown by bank's statement, land is not over-valued for tax purposes. National Bank v. Board of Supvrs., 159 Miss. 62, 132 So. 95 (1931).

Bank which in rendering tax statement deducted value of real estate from total assets could not have assessment of its capital stock abated on ground actual value of real estate exceeded true value of capital surplus. National Bank v. Board of Supvrs., 159 Miss. 62, 132 So. 95 (1931).

5. —Applicability to personal property.

Cut over lands assessed for taxation as timbered lands, is entitled to reduction in assessment to the value of the land. Board of Supvrs. v. Mobile & O.R. Co., 99 Miss. 845, 56 So. 173 (1911).

6. Destruction or deterioration by accident or act of providence; insurance.

This section [Code 1942, § 9815] applies only where the destruction of the property is fully covered by insurance. Kuhn Bros. v. Warren County, 98 Miss. 879, 54 So. 442 (1911).

This section [Code 1942, § 9815] is mandatory on the board of supervisors to reduce an assessment to the true value of the property in case of destruction or deterioration in value, and a reduction may be compelled by the courts. Kuhn Bros. v. Warren County, 98 Miss. 879, 54 So. 442 (1911).

Deterioration in the value of land caused by the usual flow of the Mississippi is not a deterioration by any casualty. Forsdick v. Board of Supvrs., 25 So. 294 (Miss. 1899).

7. Timber lands; removal of timber.

Where timber has been wrongfully assessed as being on land, on the owner's application, the board should make a reduction. Board of Supvrs. v. Cox, 114 Miss. 276, 75 So. 118 (1917).

Where property had been assessed as standing timber which prior to such assessment had been completely removed and converted to personalty and taxed as such, the assessment on standing timber should be canceled. Board of Supvrs. v. Trexler Lumber Co., 109 Miss. 372, 69 So. 181 (1915), error overruled 69 So. 663.

Where wild lands were assessed by a separate valuation of the land and the timber and approved by the board of supervisors, such assessment could only be questioned by a direct appeal therefrom. Darnell v. Johnston, 109 Miss. 570, 68 So. 780 (1915).

If the board of supervisors assess land by an arbitrary valuation in taking into consideration the value of the timber growing thereon and assessing the land exclusive of the timber the court, in an action seeking to have the board reassess the land, can compel a reassessment in conformity with the equality and uniformity clause of the Constitution. Darnell v. Johnston, 109 Miss. 570, 68 So. 780 (1915).

ATTORNEY GENERAL OPINIONS

Tax collector is required to accept payment of taxes tendered to him, regardless of whether tax collector/assessor challenges validity of change in assessment made by Board of Supervisors. Hosey, May 9, 1991, A.G. Op. #91-0369.

Miss. Code Section 27-35-143(12) specifically allows for taxpayer to make a written objection to assessment “when the property has been assessed for more than its actual value”. McWilliams Jan. 20, 1993, A.G. Op. #92-1018.

Only recourse left to county tax collector was to seek payment for back taxes owed from former owner of building where building was always assessed separately from land and building was deserted and torn down. Dillard, Feb. 24, 1994, A.G. Op. #93-1009.

Section 27-35-143(10) governs the correcting of land roll errors for the assessment of an incorrect number of acres. This change must be made prior to the last Monday in August. James, August 14, 1995, A.G. Op. #95-0539.

Section 27-35-143 allows for changes in assessment which increase taxes on the property being assessed. Collier, August 23, 1995, A.G. Op. #95-0164.

The Board of Supervisors may require proof to verify a particular land use in deciding a change of assessment application. Goff, March 27, 1998, A.G. Op. #98-0136.

A county board of supervisors, upon finding consistent with fact and spread upon its minutes that an entity is entitled to a tax exemption for the current year and was so entitled for the previous year, may amend the assessment roll for the previous year, and may authorize a refund of taxes paid pursuant thereto when such amendment and authorization is ordered within the time limit prescribed by this section. Barry, February 19, 1999, A.G. Op. #99-0071.

The tax assessor and collector of a county is not empowered to change assessments upon approved tax rolls prior to submitting such changes to the board of supervisors for its approval, and the board of supervisors may not delegate such power to the tax assessor and collector. Tucker, Jan. 28, 2000, A.G. Op. #2000-0019.

Only the assessment roll for 1999 could be amended to show property in question as exempt, so that the taxes for 1999 could be refunded. Reynolds, April 28, 2000, A.G. Op. #2000-0212.

If a vehicle which cannot properly be classified as manufactured housing or a mobile home has been put on the land rolls, then it is incorrectly classified and the tax assessor/collector should use the procedures for change of assessment contained in Title 27, Chapter 35. Martin, III, Apr. 20, 2001, A.G. Op. #01-0231.

If a board of supervisors has heard and accepted proper testimony and finds from the evidence presented to it that property was assessed for more than its actual value, a change in the assessment is warranted. Barry, Sept. 13, 2002, A.G. Op. #02-0528.

There is no provision for taxes being reimbursable pro rata for fractional parts of a tax year after the property is acquired by a charitable or benevolent organization. Hollimon, Dec. 6, 2002, A.G. Op. #02-0677.

Provided the County Board of Supervisors finds in accordance with Section 27-35-143(12) that property was assessed in excess of it actual value, then the Board may correct the assessment. Barry, Jan. 24, 2003, A.G. Op. #03-0026.

Since the tax sales and foreclosure sale of property were void, it appears that the assessment for the 2003 roll is "in the name of another than the owner of the property," and, if the board of supervisors so finds, then it may use the provisions of this section to correct the 2003 roll and allow homestead exemption, if completed prior to the last Monday in August, 2004. Hollimon, July 16, 2004, A.G. Op. #04-0239.

Where August 2002 and August 2003 tax sales and the April 2001 foreclosure sale were void, if the board of supervisors makes the appropriate findings, it may use the provisions of this section to direct that the property be assessed in the individual's name for the 2004 tax year and allow homestead exemption for 2004 without the need of further filing by the individual property owner. Hollimon, July 16, 2004, A.G. Op. #04-0239.

Section 27-35-143(9) is directive in nature and requires boards of supervisors to take insurance proceeds into account when deciding to change, cancel or decrease the assessment of ad valorem taxes. Meadows, Mar. 10, 2006, A.G. Op. #06-0060.

RESEARCH REFERENCES

ALR. Who may complain of underassessment or nonassessment of property for taxation. 5 A.L.R.2d 576.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 706 et seq., 57.

CJS. 84 C.J.S., Taxation §§ 769, 771-782.

§ 27-35-145. Application for change of assessment; hearing; order.

Any person desiring a change in assessment as provided in Section 27-35-143 shall make, in writing, an application in duplicate to the board of supervisors of the county where such assessment is made (or the tax assessor of the county may make such applications for him) on the forms prescribed, setting forth the grounds for the reduction, change, or cancellation claimed. At any meeting, either regular, special, or adjourned, the board of supervisors may hear and determine the matter and shall require such evidence as, in its opinion, is necessary to substantiate the application. If the board approves the application it shall adopt an order setting forth its conclusions, which order shall be dealt with as hereinafter provided. The state tax commission shall prescribe and furnish the forms necessary for complying with the provisions of this section.

SOURCES: Codes, 1930, § 3192; 1942, § 9816.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 712 et seq.

CJS. 84 C.J.S., Taxation §§ 826 et seq.

§ 27-35-147. Changes of assessments on motion of board or other officer.

The board of supervisors, upon its own motion, or upon notice from the tax assessor, the state tax commission, or other officer authorized to assess, or have assessed property escaping taxation, shall have power, at any time in the current year that an assessment roll is in force, to increase an assessment subject to approval as hereinafter provided, or to assess property or persons omitted from such roll or rolls under the following circumstances:

1. When lands have been assessed and buildings and improvements thereon have been omitted from the roll.
2. When the value of lands, assessed according to the number of acres or as an entire tract, has increased because actually subdivided into lots or smaller tracts, on or before the preceding tax lien date.
3. When the value of the lands has been increased by reason of changes or improvements made in or on adjacent lands before the preceding tax lien date, and the lands have been assessed without taking into consideration the changed conditions.
4. When lands or improvements thereon have been listed as exempt from taxation, but were subject to assessment and taxation on the preceding tax lien date.
5. When the property is liable for a special district levy tax but has not been assessed for the benefit of such district.

When the board of supervisors shall change any assessment as provided in this section, it shall require its clerk to give ten (10) days' notice in writing, and the notice may be given by mail to the last known address of the party, or by newspaper publication, and all objections to such change shall be heard at the next meeting of the board of supervisors. The party affected by the order may appeal from the decision of the board in the manner provided for appeal from other assessments.

SOURCES: Codes, 1857, ch. 30, art 29; 1871, § 1688; 1880, § 507; 1892, § 3799; 1906, § 4312; Hemingway's 1917, § 6946; 1930, § 3193; 1942, § 9817; Laws, 1950, ch. 298, § 6.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Objections to assessment rolls, see §§ 27-35-89, 27-35-93.

Equalization of rolls, see § 27-35-131.

Assessment of property or persons having escaped taxation, see § 27-35-155.

JUDICIAL DECISIONS

1. Constitutionality.
2. Construction and application.

1. Constitutionality.

A statute authorizing the board of supervisors at any time to change an assessment to cover improvements on land was constitutional. Board of Supvrs. v. Tate, 78 Miss. 294, 29 So. 74 (1901).

2. Construction and application.

Board of supervisors did not have the authority to reassess an owner's property after it approved the tax roll under Miss. Code Ann. § 27-35-147, as an incorrect valuation due to the owner's failure to comply with Miss. Code Ann. § 27-35-50(4)(d) was not an incorrect classification of its land, and a special valuation under § 27-35-50(d) was not an exemption. 3545 Mitchell Rd., LLC v. Bd. of Supervisors, 62 So. 3d 379 (Miss. 2011).

The law authorizing the board of supervisors to change assessment at any time held not repealed. State ex rel. Knox v. Board of Supvrs., 146 Miss. 345, 111 So. 594 (1927).

An order made by the board of supervisors under this section [Code 1942, § 9817] is not subject to review by the state tax commission. Board of Supvrs. v. Laurel Mills, 130 Miss. 454, 94 So. 448 (1923).

Such former statute did not authorize an increase of assessment because the value of land was enhanced by the building of a railroad near it. Hancock County Supvrs. v. Simmons, 86 Miss. 302, 38 So. 337 (1905).

A former statute (Code 1892, § 3799), authorizing the board of supervisors to increase or decrease assessments in case of additions to or deterioration of property was applicable to assessments of personal as well as real property. Jennings v. Board of Supvrs., 79 Miss. 523, 31 So. 107 (1902).

The proceeding of a board of supervisors in charging as an additional assessment on land an oil mill placed on the land after the original assessment was not void because the tax collector gave in the oil mill as personalty, when it was fixed to the land. Board of Supvrs. v. Tate, 78 Miss. 294, 29 So. 74 (1901).

ATTORNEY GENERAL OPINIONS

Any increase in taxes pursuant to changes in the assessment under Section 27-35-147 shall be due and payable upon the final order of the board of supervisors adopting such a change in assessment of the property and the approval of the state tax commission as provided for by Section 27-35-149. Collier, August 23, 1995, A.G. Op. #95-0164.

While a county board of supervisors has ample authority in the law to examine property listed on the tax rolls as tax exempt and to ask for information from the property owner in order to determine the correctness of the exemption, there is no authority under the home rule statute for the county to monitor hospitals for compliance with § 27-31-1(f). Haque, Feb. 22, 2002, A.G. Op. #02-0039.

RESEARCH REFERENCES

ALR. Sufficiency of compliance with statute providing for service by mail of notice in tax procedure. 155 A.L.R. 1279.

Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 27-35-149. Further procedure under §§ 27-35-143 through 27-35-147.

It shall be the duty of the board of supervisors in carrying out the provisions of Sections 27-35-143 through 27-35-147 to make such changes in assessments as will cause the taxes to be charged to the person or property liable therefor, and to fix the assessments of property according to the true value thereof, to the end that all property shall be assessed and taxed equally and uniformly. In all cases, the board shall adopt an order and enter the same on its minutes, and shall show in its order the page and line of the assessment roll where such change or correction is made.

Upon receipt of the order (and application, if one be required), the clerk of the board of supervisors shall transmit a certified copy of the order to the tax collector of his county and shall file the application as a record in his office. No assessment shall be increased or decreased and no credit to or charge against the tax collector of any county on account of such increase or decrease shall be entered by the Auditor of Public Accounts or by the county auditor except as shown by an order adopted by the board of supervisors as provided herein. All changes in assessment made under the provisions hereof shall be entered on the proper line and page of the assessment roll in force, and the clerk and tax collector shall keep the proper record of all such changes, increases or decreases. Nothing in this and Sections 27-35-143 through 27-35-147 shall be construed to affect or modify any law with reference to the assessing of property which has escaped taxation in former years.

SOURCES: Codes, 1930, § 3194; 1942, § 9818; Laws, 1998, ch. 453, § 1; Laws, 2002, ch. 345, § 1, eff from and after passage (approved Mar. 18, 2002.)

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Proceedings in case of undervaluation by taxpayer, see § 27-35-29.

Assessment of lands, see § 27-35-49.

Assessment of property which has escaped taxation in former years, see § 27-35-155.

JUDICIAL DECISIONS

1. In general.

Before the state tax commission could lawfully reject or disapprove an order of the board of supervisors making a reduction of an ad valorem assessment on real estate, the commission must have before it competent evidence to the effect that the order of the board of supervisors is in fact erroneous. Stuart v. Board of Supvrs., 195 Miss. 1, 11 So. 2d 212 (1943).

The effect of such an unlawful rejection of the order of a board of supervisors reducing an ad valorem assessment of real estate was to leave the order of the board of supervisors, made in response to the petition of the taxpayer, in full effect, and the taxpayer was entitled to equitable relief, as against the contention that upon receipt of the tax commission order disapproving the decision of the board of supervisors, the board should have entered an order denying the taxpayer's petition so that the taxpayer could appeal at law from such order, since the statute made no provision for any such action on the part of the board of supervisors. Stuart v. Board of Supvrs., 195 Miss. 1, 11 So. 2d 212 (1943).

Where the state tax commission rejected and disapproved such order without referring to any evidence whatsoever, without hearing or notice to the taxpayer, and denying the taxpayer's request to present the evidence on which the board's order was based, order of rejection and disapproval was void and in violation of the constitutional provision that no property shall be assessed for taxes at more than its actual value. Stuart v. Board of Supvrs., 195 Miss. 1, 11 So. 2d 212 (1943).

Since a taxpayer would have been entitled to an appeal to the circuit court and trial de novo therein from an unfavorable decision of the board of supervisors on the question of reduction of ad valorem assessment on his property, and the jury therein would be governed by an instruction that no specific parcel of real estate may be assessed at more than its actual value, the right of the taxpayer in this respect could not be less with respect to a review by the state tax commission of a favorable decision of the board of supervisors, the state tax commission being subject to the same instruction. Stuart v. Board of Supvrs., 195 Miss. 1, 11 So. 2d 212 (1943).

ATTORNEY GENERAL OPINIONS

The clerk of the board of supervisors would not be authorized to charge fees for certifying the proceedings of the board of supervisors to the state tax commission. Compensation for this service is covered in the section providing for compensation for public services not otherwise provided for. 1937-39, A.G. Op. p. 117.

Any increase in taxes pursuant to changes in the assessment under Section 27-35-147 shall be due and payable upon the final order of the board of supervisors adopting such a change in assessment of the property and the approval of the state tax commission as provided for by Section 27-35-149. Collier, August 23, 1995, A.G. Op. #95-0164.

§ 27-35-151. Meetings of board of supervisors.

If the board of supervisors fail to meet at the times appointed, it shall be convened by the president thereof as speedily as practicable, for the discharge of the duties prescribed by this chapter. If any member of the board fail to discharge the duties required of him by this chapter, or to attend the meetings of the board for that purpose without sufficient excuse, he shall be fined by the board in the sum of One Hundred Dollars ($100.00), on which a scire facias shall issue, returnable to the next term of the circuit court, to be therein proceeded upon according to law.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art 17 (39); 1857, ch. 3, art 64; 1871, § 1730; 1880, § 556; 1892, § 3848; 1906, § 4365; Hemingway's 1917, § 7004; 1930, § 3195; 1942, § 9819.

§ 27-35-153. Addition to rolls by assessor.

The assessor, after returning his roll, may add any person or thing to it at any time before the adjournment of the first equalization term of the board of supervisors.

SOURCES: Codes, 1871, § 1689; 1880, § 509; 1892, § 3800; 1906, § 4313; Hemingway's 1917, § 6947; 1930, § 3196; 1942, § 9820.

JUDICIAL DECISIONS

1. In general.

An assessment for back taxes which should have been paid in his lifetime by a testator on money, stocks, bonds and solvent credits owned by him cannot be made against property which never belonged to him and upon which the taxes were paid, although it was purchased by the legatees with their legacies. Adams v. Schwartz's Heirs, 80 Miss. 660, 32 So. 280 (1902).

Under former statutory provisions requiring assessor to assess property that had escaped taxation in former years, authorizing him to add property to the roll after returning it to the board of supervisors and before final action thereon, and requiring the collector to assess all property left unassessed, it was the duty of an assessor at any time to assess property that had escaped taxation for former years. State ex rel. Dist. Att'y v. Simmons, 70 Miss. 485, 12 So. 477 (1893).

This he might be compelled to do by mandamus and it was not material that the time had passed for him to make assessments for the current year. State ex rel. Dist. Att'y v. Simmons, 70 Miss. 485, 12 So. 477 (1893).

ATTORNEY GENERAL OPINIONS

The tax assessor and collector of a county is not empowered to change assessments upon approved tax rolls prior to submitting such changes to the board of supervisors for its approval, and the board of supervisors may not delegate such power to the tax assessor and collector. Tucker, Jan. 28, 2000, A.G. Op. #2000-0019.

§ 27-35-155. Assessment of persons and property having escaped taxation.

When the assessor shall discover any persons or property that have escaped taxation in any former year or years, or shall discover that any person or property is escaping taxation for the current year, after the final approval of the assessment roll, as provided by Section 27-35-127, Mississippi Code of 1972, by reason of not being assessed, he shall make the proper assessment by way of an additional assessment for such year or years, distinctly specifying the property, its location, its value, the name of the owner, if known, and the year or years it has escaped assessment and taxation, separately assessing the person or property for the current year. When such assessments are completed, he shall file the same, under his affidavit, with the clerk of the board of supervisors; and shall at the same time notify the board of supervisors, in writing, of the assessment. The power of the assessor to assess property that has escaped taxation by way of additional assessments for a former year or years shall expire at the end of the seven (7) years from the date when his right so to do first accrued.

No leasehold interest in any property, real or personal, belonging to the state of Mississippi, counties, districts, municipalities or any political subdivisions, shall be subjected to ad valorem taxation for any past year on the basis of it having been omitted from the ad valorem tax rolls.

SOURCES: Codes, 1880, § 486; 1892, § 3768; 1906, § 4277; Hemingway's 1917, § 6911; 1930, § 3197; 1942, § 9821; Laws, 1932, ch. 181; Laws, 1946, ch. 336, § 1; Laws, 1954, ch. 379; Laws, 1984, ch. 456, § 3, eff from and after passage (approved May 9, 1984).

Cross References — Municipal assessment of property escaping taxation, see § 21-33-55.

For a similar provision exempting state-owned leasehold interests in real and personal property from back assessments, see § 21-33-55.

Department of Revenue's investigation of property escaping taxation, see § 27-3-39.

General exemptions from ad valorem tax, see § 27-31-1.

Consideration of land roll and procedure for changes, see § 27-35-135.

Changes in assessments, see §§ 27-35-143 through 27-35-149.

Assessment of railroad property escaping taxation in former years, see § 27-35-325.

Assessment of lands sold to state under void tax sales, see § 29-1-31.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application, generally.
3. Particular applications.

1. Validity.

Leasehold interest held by a private holder was entitled to the exemption provided for under Miss. Code Ann. § 27-35-155; because the county admitted to omitting the holder's leasehold interest from the ad valorem tax rolls, the leasehold interest was not subject to ad valorem taxation for any past year for which it was not listed on the tax roll. In re Assessment of Ad Valorem Taxes on Leasehold Interest Held by Reed Mfg., Inc., 854 So. 2d 1066 (Miss. 2003).

The legislature has power to authorize the county tax assessor to back assess property which has escaped taxation in former years and such statute is held to be valid. Reed v. Norman-Breaux Lumber Co., 149 Miss. 395, 115 So. 724 (1928), appeal dismissed, 278 U.S. 556, 49 S. Ct. 14, 73 L. Ed. 503 (1928).

2. Construction and application, generally.

Where the county assessor assesses property escaping taxation in former years and the board approves the assessment and there is no appeal, an injunction will not lie against collecting taxes thereon. Reed v. Norman-Breaux Lumber Co., 149 Miss. 395, 115 So. 724 (1928), appeal dismissed, 278 U.S. 556, 49 S. Ct. 14, 73 L. Ed. 503 (1928).

Questions settled on former appeal will be adhered to on second appeal in the same case. Reed v. Norman-Breaux Lumber Co., 149 Miss. 395, 115 So. 724 (1928), appeal dismissed, 278 U.S. 556, 49 S. Ct. 14, 73 L. Ed. 503 (1928).

An appeal to the circuit court from assessment of property for back taxes is the exclusive remedy, where the assessment is valid on its face. Reed v. Norman-Breaux Lumber Co., 149 Miss. 395, 115 So. 724 (1928), appeal dismissed, 278 U.S. 556, 49 S. Ct. 14, 73 L. Ed. 503 (1928).

The board of supervisors has no power to assess property for back taxes, but can merely approve or disapprove the assessment. Adams v. First Nat'l Bank, 103 Miss. 744, 60 So. 770 (1913).

Back assessments of property cannot be made where the assessment roll shows on its face that such property has been assessed, though such assessment is absolutely void. Adams v. Luce, 87 Miss. 220, 39 So. 418 (1905).

3. Particular applications.

Interest on amount of taxes and damages due because of failure to pay municipal privilege tax would run on the judgment against the taxpayer only from the date of judgment. General Contract Corp. v. Bailey, 218 Miss. 484, 67 So. 2d 485 (1953).

Time check payable to the stockholders of a bank at a future date, is before the time for the presentation of the check, an asset of the bank and subject to taxation. Grenada Bank v. Adams, 87 Miss. 669, 40 So. 4 (1906).

Money on hand, on deposit or loaned is not embraced in an assessment for "amount of indebtedness which the taxpayer regards as probably collectible," and the approval of such an assessment does not preclude a subsequent assessment of money which has escaped taxes under this section [Code 1942, § 9821] or under the Laws 1894 ch. 34. Adams v. Clarke, 80 Miss. 134, 31 So. 216 (1902).

Where a bank has paid on its surplus assessed as such, there can be no other assessment on surplus. This section [Code 1942, § 9821] and the succeeding section [Code 1942, § 9822] have no application to such a case. Bank of Oxford v. Board of Supvrs., 79 Miss. 152, 29 So. 825 (1901).

Where part of the capital stock of a bank has escaped taxation, it may be assessed for the taxes which should have been imposed upon it. Bank of Oxford v. Board of Supvrs., 79 Miss. 152, 29 So. 825 (1901).

Such shares should be assessed at their real value. Bank of Oxford v. Board of Supvrs., 79 Miss. 152, 29 So. 825 (1901).

ATTORNEY GENERAL OPINIONS

Section would apply to true owner when assessment was made to person not owner who obtains refund for taxes erroneously paid. Bardwell, June 8, 1990, A.G. Op. #90-0413.

Power of tax assessor to assess personal property which has escaped taxation expires at end of seven years from date when right to do so first accrued. Brown, Nov. 25, 1992, A.G. Op. #92-0887.

Facilities consisting of man-made underground storage facilities are not mere holes or caverns underground but rather are "improvements" in nature of fixture or other tangible addition to property that can be assessed and/or owned independently of surface interest; if, in fact, such storage facilities have not been assessed, Miss. Code Section 27-35-155 requires assessor to "make the proper assessment by way of an additional assessment for such year or years, distinctly specifying the property, its location, its value, the name of the owner, if known, and the year or years it has escaped assessment and taxation"; under specific provisions of Miss. Code Section 27-35-155, law requires back assessment of property that has escaped taxation for seven years from date when right to tax first accrued. Martin, May 6, 1993, A.G. Op. #93-0328.

Statute does not create any tax exemption which would be limited by Section 182 of the Constitution. Patterson, June 30, 1993, A.G. Op. #93-0384.

A taxpayer is liable for unpaid motor vehicle ad valorem taxes for the last seven years when those taxes were unassessed due to the tax collector's error regardless of any good faith by the taxpayer. Hall, March 8, 1999, A.G. Op. #99-0072.

The tax assessor and collector of a county is not empowered to change assessments upon approved tax rolls prior to submitting such changes to the board of supervisors for its approval, and the board of supervisors may not delegate such power to the tax assessor and collector.

Tucker, Jan. 28, 2000, A.G. Op. #2000-0019.

No authority can be found for either a board of supervisors or the Governor to forgive ad valorem taxes that have been properly assessed but are due and unpaid. Griffin, Mar. 12, 2004, A.G. Op. 04-0081.

No authority can be found under which a board of commissioners or the Governor may grant relief from ad valorem property taxes. Griffin, Mar. 12, 2004, A.G. Op. 04-0081.

The current corporate lessee of county-owned property first leased in 1963 under the old A. & I. statutes with exemption from ad valorem taxes for an unspecified period is entitled to an exemption for 10 years from the date the county approved assignment of the lease to that company. When the 10 years has already expired and the county erroneously omitted that leasehold from the tax assessment rolls for several years, the county may not assess back taxes. Approval by the county of sub-leases of the property is not an unlawful donation to a private party. Munn, March 9, 2007, A.G. Op. #07-00067, 2007 Miss. AG LEXIS 101.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 700 et seq.

CJS. 84 C.J.S., Taxation § 607.

§ 27-35-157. Notice to persons assessed for former years.

When the assessor shall assess the persons or property, as provided in Section 27-35-155 and shall file the same with the clerk as therein provided, the clerk shall enter the same on the last approved roll or rolls in his hands, separately for former years, and for the current year. The clerk shall immediately give ten (10) days' notice in writing, to the person or corporation whose property is thus assessed, that all objections to such assessment must be made in writing to the board of supervisors, and will be heard and determined at the next regular meeting of the board. The board at its regular meeting may continue the matter to any other regular, special or adjourned meeting of said board. When the assessment is finally fixed and approved by the board, an appeal to the circuit court may be taken from the order of the board approving or disapproving such assessment, by the owner of the property, or by the attorney general or other officer authorized by law, in the manner, and within the time, provided by law. If the assessment be approved and no appeal be taken, when the same has been finally determined, the clerk shall certify the said assessment to the tax collector, setting forth in his certificate the year or years for which such assessment is made, and separately the current assessment, the name of the municipality, road district, school district, or other taxing district in which the same is located. Taxes for the current year shall be collected as provided by law for other non-delinquent taxes. The tax collector shall proceed forthwith to collect all taxes due on said assessment for the former year or years at the rates fixed by law and, in addition thereto, shall collect as a penalty ten percent (10%) of the amount of the taxes due for each year, together with interest at six percent (6%) per annum computed from the first day of February on which the taxes should have been paid. If the taxes, penalties and interest shall not be paid within thirty (30) days after the final assessment is certified to him, the property, if it be real estate, shall be sold as provided by law, and if it be personal property, the tax collector shall proceed to collect by distress, or otherwise, as provided by law.

SOURCES: Codes, 1880, § 487; 1892, § 3769; 1906, § 4278; Hemingway's 1917, § 6912; 1930, § 3198; 1942, § 9822; Laws, 1946, ch. 336, § 2.

Cross References — Appeals from tax assessments generally, see § 11-51-77.

Objections to assessment rolls, see §§ 27-35-89, 27-35-93.

Appeals by taxpayer from supervisors' equalization of assessments, see § 27-35-119.

Equalization by board of supervisors, see § 27-35-131.

Appeals from Board of Tax Appeals, see § 27-35-163.

Tax collector's duty to assess and collect taxes on land left unassessed by assessor, see § 27-41-19.

JUDICIAL DECISIONS

1. In general.

Attempted assessment of back taxes against farm land owned by, and used in the operation of, college by mayor and commissioners of municipality was void for failure to adjudicate necessary jurisdictional fact that 10 days' notice in writing was given to the property owner as required by law. City of Jackson v. Belhaven College, 195 Miss. 734, 15 So. 2d 621 (1943).

Assessment of back taxes against farm land owned by college was void where assessment was made by mayor and commissioners of the municipality and not by the assessor as required by law. City of Jackson v. Belhaven College, 195 Miss. 734, 15 So. 2d 621 (1943).

The back assessment statute only authorizes the assessment of property that has escaped taxation and does not apply where the assessment roll shows that it has been assessed, although the assessment be void. Adams v. Luce, 87 Miss. 220, 39 So. 418 (1905).

Where a bank has paid on its surplus assets as such, there can be no other assessment on surplus. This section [Code 1942, § 9822] and the next preceding section [Code 1942, § 9821] have no application to such a case. Bank of Oxford v. Board of Supvrs., 79 Miss. 152, 29 So. 825 (1901).

ATTORNEY GENERAL OPINIONS

Tax assessor should properly assess the property for each year that taxes were not paid and collect all taxes due on assessment for years for which taxes are delinquent, and in addition collect as penalty ten percent of amount of taxes due for each year, together with interest at six percent per year beginning with first day of February on which taxes should have been paid; if owner, after notice of reassessment, does not pay delinquent taxes, penalty and interest, tax collector is directed to sell property for taxes at next regular tax sale. Benson, Nov. 4, 1992, A.G. Op. #92-0801.

The tax assessor and tax collector are required to collect the penalty set forth in the statute upon property that has escaped taxation. Eaton, July 31, 1998, A.G. Op. #98-0421.

The tax assessor and collector of a county is not empowered to change assessments upon approved tax rolls prior to submitting such changes to the board of supervisors for its approval, and the board of supervisors may not delegate such power to the tax assessor and collector. Tucker, Jan. 28, 2000, A.G. Op. #2000-0019.

No authority can be found for either a board of supervisors or the Governor to forgive ad valorem taxes that have been properly assessed but are due and unpaid. Griffin, Mar. 12, 2004, A.G. Op. 04-0081.

The collection of the penalty and interest under this section is mandatory. Griffin, Mar. 12, 2004, A.G. Op. 04-0081.

No authority can be found which would allow a board of commissioners or the Governor to grant the taxpayer additional time within which to pay the taxes. Griffin, Mar. 12, 2004, A.G. Op. 04-0081.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 701.

CJS. 84 C.J.S., Taxation §§ 892-897.

§ 27-35-159. Tax delinquent lands; change in assessment.

In all cases where lands have been or which may hereafter be struck off to the state for delinquent taxes and the time for redemption has expired, and said lands have been stricken from the list of state lands for any cause provided by law, the board of supervisors of the county in which said lands are situated may, upon petition of the owner or the assessor or any person interested in the land, change, correct, revise and re-value the assessments of said land for each of the years for which the taxes have not been paid, and the board of supervisors may enter an order directing that such assessments as changed, corrected, revised and/or re-valued shall be entered upon the assessment roll in force for the year in which the order is entered, whereupon the tax assessor, or tax collector in the event the roll is in the hands of the tax collector at the time, shall enter such assessments on the roll in the manner as additional assessments are now made, and the tax collector shall collect the taxes on such assessments as other taxes are collected.

The payment of the taxes as herein provided shall cancel all liens and satisfy all claims of the state, county, levee districts and other taxing districts, against said lands for the taxes for the respective years for which the said taxes are paid.

SOURCES: Codes, 1942, § 9823; Laws, 1935, ch. 55.

Cross References — Assessment of lands sold to state under void tax sales, see § 29-1-31.

ATTORNEY GENERAL OPINIONS

When a chancery clerk receives notice from the land commissioner that certain lands have been stricken from the rolls in his office, either the owner, the county tax assessor, or any person interested in the land may have such land back-assessed. It should be back-assessed for each and every year it has escaped payment of taxes and the taxes collected for each of said years as shown by the levies for said years. 1939-41, A.G. Op. p. 81.

Inasmuch as the sale to the state was void, there would be no damage, no interest and no fees, except, of course, for the assessment and collection of the taxes. 1939-41, A.G. Op p 81.

§ 27-35-161. Taxes collected from persons removing.

When the assessor shall learn that any person assessed with personal property, or subject to assessment, is about to leave the county or remove the property, he shall notify the tax collector; and when the tax collector receives such notice, or has information, no matter from whom or how derived, that a person liable for personal property taxes, or owning taxable personal property, is about to remove from the county or remove the property, whether the time for collecting taxes by distress and sale of the property has come or not, or whether the property be assessed or not, if the tax collector shall determine that the removal of the person or property will probably result in a failure to collect the personal property taxes, the said tax collector shall demand bond of the said person, as owner, agent or otherwise, in an amount sufficient to cover all taxes estimated to be due or to become due up to the end of the current year by said person, as the owner, agent or otherwise of the personal property. In default of such bond, the said tax collector shall seize sufficient of the property of said person to pay said taxes, and shall hold the same until such time as same may be sold under distress and sale by the tax collector in due course of such procedure. In lieu of such bond, the tax collector may accept cash in an amount which is ten percent (10%) in excess of the estimated unpaid taxes; and the tax collector shall be officially responsible for such cash deposit. When bond is given as required in this section, the same shall be in the name of the state, and suit may be brought thereon by the tax collector in any court of competent jurisdiction.

SOURCES: Codes, 1880, § 488; 1892, § 3770; 1906, § 4279; Hemingway's 1917, § 6913; 1930, § 3199; 1942, § 9824; Laws, 1946, ch. 334.

Cross References — Tax collector's duty to assess and collect taxes on personal property left unassessed by assessor, see § 27-41-19.

Collection of taxes by sale of debts, see § 27-41-47.

Mobile home taxes, see § 27-53-19.

JUDICIAL DECISIONS

1. In general.

Where a foreign corporation, engaged in the laying of pipelines for transmission of natural gas, stored machinery and equipment on tax day and for three months prior to the tax day, this material and equipment was subject to personal property tax. Anderson Bros. Corp. v. Board of Supvrs., 221 Miss. 361, 73 So. 2d 105 (1954), appeal dismissed, 348 U.S. 923, 75 S. Ct. 341, 99 L. Ed. 724 (1955).

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 173 (allegation of complaint, petition, or declaration in action to enforce personal property tax liability of removal of personal property from jurisdiction); Form 174 (allegation of complaint, petition, or declaration that personal property is unavailable for seizure); Form 175 (distress warrant to collect delinquent personal property taxes and penalty).

§ 27-35-163. Appeals from orders of Board of Tax Appeals by person, firm or corporation; appeals from orders of Board of Tax Appeals by Department of Revenue; appeals by state of assessments by Department of Revenue or orders of Board of Tax Appeals.

(1) Except as otherwise provided in subsection (2) of this section, any person, firm or corporation aggrieved by an order of the Board of Tax Appeals affirming, in whole or in part, the assessment of property by the Department of Revenue for the purpose of ad valorem taxation may, within thirty (30) days from the date of this order, appeal with supersedeas as to the amount of taxes in controversy to the Circuit Court of the First Judicial District of Hinds County, or to the circuit court of any county in which the property, or any part thereof, is located, or to the circuit court of any county in which such person, firm or corporation whose property is assessed resides, upon giving bond with sufficient sureties, to be approved by the clerk of such court, in a sum equal to the amount of taxes due on the contested value of such property as affirmed by the Board of Tax Appeals, but never less than One Hundred Dollars ($100.00), payable to the state and conditioned to perform the judgment of the circuit court. The ad valorem taxes due on the uncontested portion of the value as determined by the Board of Tax Appeals shall be due and payable at the same time as all other ad valorem taxes are for real and personal property. The person, firm or corporation who appeals shall file with the clerk of the circuit court a petition for appeal and review, together with the bond herein provided for, and the clerk shall thereupon give notice to the Department of Revenue, who will be the appellee in the appeal, and to the Board of Tax Appeals. The Department of Revenue shall file with the clerk of the circuit court where the petition is pending a certified copy of the assessment in issue and the Board of Tax Appeals shall file a certified copy of its order or orders in regard to this assessment. The assessment by the Department of Revenue and the order or orders of the Board of Tax Appeals are to be filed with the circuit clerk within thirty (30) days from the date that each respective agency and board received the notice from the clerk of the circuit court concerning the filing of the appeal. The matter of assessing such property shall be heard de novo by the circuit court at the first term of the court thereafter, or by the judge of the circuit court in vacation, by agreement of the parties, without a jury, and such proceeding shall be given preference over other pending matters in the court. After hearing the evidence, the circuit court, or the judge thereof in vacation, shall make an order setting aside, modifying or affirming the order of the Board of Tax Appeals. A copy of such order shall be certified by the clerk of the court to the Department of Revenue, which shall conform thereto.

If the order of the Board of Tax Appeals is affirmed, then the person, firm or corporation who appealed, and the sureties on the appeal bond, shall be liable to the state for damages at the rate of ten percent (10%) on the amount of taxes in controversy, and all cost of such appeal.

If the Department of Revenue shall be aggrieved by an order of the Board of Tax Appeals regarding an assessment by the department for ad valorem tax purposes, the department may, within thirty (30) days from the date of the order of the Board of Tax Appeals regarding this assessment, appeal to the circuit court of any county in which the property being assessed, or any part thereof, is located or of any county in which the taxpayer resides, in like manner as in the case of any person, firm or corporation aggrieved as provided in this subsection, except no bonds shall be required of the Department of Revenue. Upon the filing of a petition for appeal or review as provided in this subsection, the clerk of the court in which the petition is filed shall thereupon issue process to the person, firm or corporation whose property is assessed, and such person, firm or corporation shall plead to the petition within thirty (30) days after the receipt of the notice.

If the state shall be aggrieved by an assessment for ad valorem tax purposes by the Department of Revenue or by an order of the Board of Tax Appeals regarding an assessment by the Department of Revenue for ad valorem taxes purposes, the Attorney General or the district attorney, if all the property sought to be taxed is located within the judicial district for which such district attorney is elected, may, within thirty (30) days from the date of the notice from the Department of Revenue to the tax assessor or tax assessors in the county or counties where the property being assessed is located of the amount of the final assessment, appeal to the circuit court of any county in which the property, or any part thereof, is located or of any county in which the taxpayer resides, in like manner as in the case of any person, firm or corporation aggrieved as hereinbefore provided, except no bonds shall be required of the Attorney General or district attorney who may appeal. Upon the filing of a petition for appeal or review as herein provided, the clerk of the court in which the petition is filed shall thereupon issue process to the person, firm or corporation whose property is assessed, and such person, firm or corporation shall plead to the petition within twenty (20) days after the receipt of the notice.

In the event more than one (1) person appeals an assessment by the Department of Revenue for ad valorem tax purposes or an order of the Board of Tax Appeals regarding an assessment by the Department of Revenue for ad valorem tax purposes under this section, the matter shall be heard by the circuit court of the county in which the petition for appeal was first filed, unless otherwise agreed by the parties.

Any taxpayer aggrieved by an order of the circuit court may appeal, with supersedeas, to the Supreme Court by giving bond in the amount and conditioned as provided in the preceding paragraphs of this section.

The officer who appealed the matter from the ad valorem assessment of the Department of Revenue or from the order of the Board of Tax Appeals concerning an ad valorem assessment by the Department of Revenue may have an appeal to the Supreme Court without bond.

If the Department of Revenue appeals the matter from the order of the Board of Tax Appeals concerning an assessment by the Department of Revenue for ad valorem tax purposes, it may have an appeal to the Supreme Court without bond.

In the event the appeal by the taxpayer delays the collection of the tax due by him, then the taxpayer shall be liable for and shall pay, at the time the taxes are paid to the tax collector whose duty it is to collect the taxes, interest at the rate of twelve percent (12%) per annum from the date the taxes were due until paid.

(2) Any telephone company operating in more than six (6) counties, which is aggrieved by an assessment by the Department of Revenue for ad valorem tax purposes, may, within thirty (30) days from the date of the order of the Board of Tax Appeals regarding this assessment, appeal without bond as to the amount of taxes in controversy to the Circuit Court of the First Judicial District of Hinds County, or to the circuit court of any county in which the property, or any part thereof, is located, or to the circuit court of any county in which such telephone company resides. Notwithstanding such appeal, all of the ad valorem taxes due on the value as set by the Department of Revenue as adjusted by the Board of Tax Appeals shall be due and payable at the same time as all other ad valorem taxes are for real and personal property; provided, however, that the ad valorem taxes due on the contested portion of such value shall be paid under protest. Such telephone company shall file with the clerk of the circuit court a petition for appeal and review and the clerk shall thereupon give notice to the Department of Revenue, who will be the appellee in the appeal, and to the Board of Tax Appeals. The Department of Revenue shall file with the clerk of the circuit court where the petition is pending a certified copy of the assessment in issue and the Board of Tax Appeals shall file a certified copy of its order or orders in regard to this assessment. The assessment by the Department of Revenue and the order or orders of the Board of Tax Appeals are to be filed with the circuit clerk within thirty (30) days from the date that each respective agency and board received the notice from the clerk of the circuit court concerning the filing of the appeal. The matter of assessing such property shall be heard de novo by the circuit court at the first term of the court thereafter, or by the judge of the circuit court in vacation, by agreement of the parties, without a jury, and such proceeding shall be given preference over other pending matters in the court. After hearing the evidence, the circuit court, or the judge thereof in vacation, shall make an order setting aside, modifying or affirming the order of the Board of Tax Appeals. A copy of such order shall be certified by the clerk of the court to the Department of Revenue, which shall conform thereto.

If the Department of Revenue shall be aggrieved by an order of the Board of Tax Appeals regarding an assessment by the department for ad valorem tax purposes, the department may, within thirty (30) days from the date of the order of the Board of Tax Appeals regarding this assessment, appeal to the circuit court of any county in which the property being assessed, or any part thereof, is located or of any county in which the taxpayer resides, in like manner as in the case of any person, firm or corporation aggrieved as provided in this subsection, except no bonds shall be required of the Department of Revenue. Upon the filing of a petition for appeal or review as provided in this subsection, the clerk of the court in which the petition is filed shall thereupon issue process to the person, firm or corporation whose property is assessed, and such person, firm or corporation shall plead to the petition within thirty (30) days after the receipt of the notice.

If the state shall be aggrieved by an assessment for ad valorem purposes by the Department of Revenue or by an order of the Board of Tax Appeals regarding an assessment by the Department of Revenue for ad valorem tax purposes, the Attorney General or the district attorney, if all the property sought to be taxed is located within the judicial district for which such district attorney is elected, may, within thirty (30) days from the date of the notice from the Department of Revenue to the tax assessor or tax assessors in the county or counties where the property being assessed is located of the amount of the final assessment, appeal without bond to the circuit court of any county in which the property, or any part thereof, is located or of any county in which such telephone company resides. Upon the filing of a petition for appeal or review as herein provided, the clerk of the court in which the petition is filed shall thereupon issue process to such telephone company, and such telephone company shall plead to the petition within thirty (30) days after the receipt of the notice.

In the event more than one (1) person appeals an assessment of a telephone company by the Department of Revenue for ad valorem tax purposes or an order of the Board of Tax Appeals regarding an assessment of a telephone company by the Department of Revenue for ad valorem tax purpose, the matter shall be heard by the circuit court of the county in which the petition for appeal was first filed, unless otherwise agreed by the parties.

Any such telephone company aggrieved by an order of the circuit court may appeal without bond to the Supreme Court.

The officer who appealed the matter from ad valorem assessment of the Department of Revenue of a telephone company or from the order of the Board of Tax Appeals concerning an ad valorem tax assessment by the Department of Revenue of a telephone company may have an appeal to the Supreme Court without bond.

If the Department of Revenue appeals the matter from the order of the Board of Tax Appeals concerning an assessment of a telephone company by the Department of Revenue for ad valorem tax purposes, it may have an appeal to the Supreme Court without bond.

If the value as set by the final assessment of the Department of Revenue of the telephone company, including any adjustment ordered by the Board of Tax Appeals, is reduced by the courts as a result of appeals filed by such telephone company, the ad valorem taxes attributable to such reduction shall be disposed of by each affected local taxing district in the following manner:

(a)(i) Such local telephone company shall be entitled to a refund equal to the amount of ad valorem taxes paid by such company to the taxing district which are attributable to such reduction in value, less the portion of any refunds previously received by such telephone company pursuant to Section 27-38-5, which are attributable to such reduction in value.

(ii) If the taxing district has not paid the full amount of the refund required by this subsection by the time that ad valorem taxes become due and payable by such telephone company to such taxing district for any subsequent year or years, such telephone company shall be entitled to take a credit against the ad valorem tax liability for such subsequent year or years up to the total amount of the refund owed to such telephone company pursuant to this paragraph (a).

(b)(i) The remaining portion of the ad valorem taxes attributable to such reduction shall be paid by the taxing district to the state, and such amount shall be credited to the Telecommunications Ad Valorem Tax Reduction Fund.

(ii) To the extent that the taxing district has not fully paid to the state the amount required by this subsection, any monies due by the state to such local taxing jurisdiction shall be offset until such amount is fully paid.

SOURCES: Codes, 1942, § 9853; Laws, 1931, ch. 27; Laws, 1934, ch. 206; Laws, 1936, ch. 149; Laws, 1962, ch. 588, § 24; Laws, 1989, ch. 517, § 1; Laws, 2000, ch. 303, § 9; Laws, 2009, ch. 492, § 73, eff from and after July 1, 2010.

Editor's Note — Laws of 2000, ch. 303, § 11, provides:

"SECTION 11. If any material provision of this act is declared to be void, or if for any reason is declared to be invalid or of no effect, the remaining provisions of this act shall be void and of no effect."

Laws of 2000, ch. 303, § 12, provides:

"SECTION 12. Section 6 of this act shall be effective with respect to taxable services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2000, regardless of when such services are provided. Section 9 of this act shall take effect and be in force from and after January 1, 2001. The remaining provisions of this act shall take effect and be in force from and after July 1, 2000."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Judicial appeal from tax assessments, see § 11-51-77.
Appeal from equalization by board of supervisors, see § 27-35-119.
Appeal from assessment for former years, see § 27-35-157.
Department of revenue, see § 27-3-1 et seq.
Board of tax appeals, see § 27-4-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Standard of review.

1. In general.

Privately owned single customer natural gas pipeline companies, which did not sell to the public, did not hold certificates of public convenience and necessity from the Public Service Commission, and were not required to obtain any other franchise, license or certificate from the State of Mississippi in order to construct or operate their pipelines, were not "public service corporations" within the meaning of Mississippi Constitution Article 4, § 112 and §§ 27-35-301 et seq. Mississippi State Tax Comm'n v. Moselle Fuel Co., 568 So. 2d 720 (Miss. 1990).

In a taxpayer's suit to enjoin the State Tax Commission from approving each county's recapitulation of its assessment rolls until such time as the Commission should comply with its duty to equalize assessments among counties as provided by Code 1972 §§ 27-35-113 et seq. and Const. 1890 Art 4 § 112, the complaint was sufficient to warrant the conclusion that the Commission's actions result in the collection of taxes "without authority of law" as a prerequisite for injunctive relief under Code 1972 § 11-13-11, where the complaint alleged the Commission's failure over a period of many years to carry out its duty of equalizing assessments and in essence alleged that owners of parcels of land of identical value in different counties may face radically different tax liabilities; no adequate legal remedies were provided by Code 1972 § 27-35-163, which allow a taxpayer to obtain a judicial determination that a particular piece of property has been improperly assessed and to obtain a reduction in the tax, or by Code 1972 § 27-35-93 & § 27-35-119, which prescribe methods by which to determine the proper assessment of the particular piece of property, since plaintiff-taxpayer was not alleging an erroneous computation of the value of his property and was not seeking a new calculation of his tax. Fondren v. State Tax Comm'n, 350 So. 2d 1329 (Miss. 1977).

2. Standard of review.

Statute was to be applied liberally in order to require circuit courts to try ad valorem tax cases anew as Miss. Code Ann. § 11-51-77, an almost identical provision, allows. State Tax Comm'n v. ANR Pipeline Co., 806 So. 2d 1081 (Miss. 2001).

A corporate taxpayer, seeking to enjoin state taxing authorities from collecting back taxes as to which the taxpayer claimed exemption under the statute providing for exemption from taxation as to new enterprises, was not bound, as part of its administrative remedies, to pursue the appeal to the judge of the circuit court, as provided hereunder before it could resort to a federal equity court for relief, since the matter in controversy was not one for administrative but for judicial decision. Gully v. Interstate Natural Gas Co., 82 F.2d 145 (5th Cir. 1936), cert. denied, 298 U.S. 688, 56 S. Ct. 958, 80 L. Ed. 1407 (1936); Memphis Natural Gas Co. v. Gully, 8 F. Supp. 169 (S.D. Miss. 1934), modified, 82 F.2d 150 (5th Cir. 1936), cert. denied, 298 U.S. 688, 56 S. Ct. 956, 80 L. Ed. 1407 (1936), cert. denied, 298 U.S. 688, 56 S. Ct. 958, 80 L. Ed. 1407 (1936).

RESEARCH REFERENCES

ALR. Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation. 9 A.L.R.4th 428.

Construction and operation of statutory time limit for filing claim for state tax refund. 14 A.L.R.6th 119.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 721 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 11 et seq. (judicial review relative to equalization, collection, and review of assessment).

CJS. 84 C.J.S., Taxation §§ 888 et seq.

§ 27-35-165. Approval of reappraisal plans; contractor's performance bond; qualifications for private persons or entities performing reappraisals or appraisal updates for counties; periodic reports.

(1) No county shall expend funds for the reappraisal of property or for property appraisal updates unless the plans for reappraisal or the contract for reappraisal is in conformity with the then existing rules and regulations of the State Tax Commission and has been approved by the State Tax Commission.

(2) Reappraisal s or appraisal updates by a county may be accomplished by:

(a) Contracting with private firms for performance of the work;

(b) Hiring private consultants to perform certain functions of the work; or

(c) Employing, schooling and training county employees to perform all of the work under the supervision of the tax assessor.

(3)(a) All contracts made pursuant to subsection (2)(a) of this section shall require that the contractor furnish a payment and performance bond in an amount not less than one hundred percent (100%) of the contract price, which bond shall be conditioned, in part, to guarantee successful completion of the contract and may be conditioned upon payment of the cost of defense of any suits which may be brought against the county, the board of supervisors or the assessor arising out of such reappraisal for a period of one (1) year after completion thereof.

(b)(i) When work is performed under a contract with a private firm pursuant to subsection (2)(a) of this section and the work is performed under the direction of the county tax assessor, all personnel employed or otherwise engaged by such private firm to appraise property shall be certified under the provisions of Section 27-3-52 with expertise in mass appraisals as prescribed by the State Tax Commission.

(ii) When work is performed under a contract with a private firm pursuant to subsection (2)(a) of this section and the work is not performed under the direction of the county tax assessor, all personnel employed or otherwise engaged by such private firm to appraise property shall work under the direction of a state certified real estate appraiser as defined in Section 73-34-3 with expertise in mass appraisals as prescribed by the State Tax Commission. When a board of supervisors, pursuant to Section 27-35-129, determines to contract with a private firm not working under the direction of the county tax assessor, it may do so upon the issuance of an order by the State Tax Commission stating that the county is not in compliance with State Tax Commission rules and regulations.

(iii) When a private consultant is hired pursuant to subsection (2)(b) of this section to appraise property and the work is performed under the direction of the county tax assessor, the private consultant and all personnel employed or otherwise engaged by such private consultant to appraise property shall be certified under the provisions of Section 27-3-52.

(iv) When a private consultant is hired pursuant to subsection (2)(b) of this section to appraise property and the work is not performed under the direction of the county tax assessor, the private consultant shall be a state certified real estate appraiser as defined in Section 73-34-3 with expertise in mass appraisals as prescribed by the State Tax Commission. When a board of supervisors, pursuant to Section 27-35-129, determines to contract with a private consultant not working under the direction of the county tax assessor, it may do so upon the issuance of an order by the State Tax Commission stating that the county is not in compliance with State Tax Commission rules and regulations.

(c) A contract entered into with a private firm or a private consultant pursuant to subsection (2) of this section shall be executed by the county tax assessor and the board of supervisors if the work performed under such contract is to be performed under the direction of the county tax assessor.

(4) Each county engaged in reappraisal of property shall submit such periodic reports to the State Tax Commission as the commission may require. If, at any time, the State Tax Commission determines that the reappraisal or property appraisal update is not in conformity to the approved plan or contract, the commission shall notify the affected board of supervisors of the deficiencies and the board shall take action acceptable to the commission to correct the deficiencies within thirty (30) days or make no further expenditures on the project until the necessary corrective actions are approved by the commission.

(5) Upon payment for any work done on any contract regarding reappraisal or property appraisal update, the work product for which payment is made shall become the property of the county.

SOURCES: Laws, 1980, ch. 505, § 17; Laws, 1982, ch. 429; Laws, 2003, ch. 468, § 1, eff from and after Oct. 1, 2003.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

JUDICIAL DECISIONS

1. In general.

Miss. Code Ann. § 27-35-101 requires a county to advertise for bids for reappraisal services and has to be read together with Miss. Code Ann. § 27-35-165 and Miss. Code Ann. § 19-3-69. Hence, court erred in holding that a county had the authority to enter into a contract for appraisal services with an appraiser without advertising for bids; county was required to comply with the advertising-for-bids provisions of Miss. Code Ann. § 27-35-101 for its reappraisal work. State ex rel. Hood v. Madison County, 873 So. 2d 85 (Miss. 2004).

ATTORNEY GENERAL OPINIONS

County board of supervisors has authority to contract for reappraisal work. Blackledge, Oct. 14, 1992, A.G. Op. #92-0773.

A contract made pursuant to subsection (2)(a) of this section must require that the contractor furnish a payment and performance bond, as described in subsection (3)(a). It appears that a contract entered into under this subsection contemplates the contractor performing substantially all of the reappraisal activities. There is no requirement that a performance and payment bond accompany a contract with a private consultant to perform certain functions of the reappraisal work under subsection (2)(b); however, the county may require a performance and payment bond from the private consultant, if it desires to do so. Hodges, Sept. 24, 2004, A.G. Op. 04-0474.

RESEARCH REFERENCES

ALR. State or local government's liability to subcontractors, laborers, or materialmen for failure to require general contractor to post bond. 54 A.L.R.5th 649.

§ 27-35-167. Receipt of new assessment rolls by taxing districts and adoption of true values.

After completion of a countywide reappraisal approved by the state tax commission, the board of supervisors of each county shall provide, at cost of reproduction, to each taxing district within the boundaries of the county a true copy of that part of the new assessment roll approved by the state tax commission containing the property located within that taxing district; and such taxing district shall adopt such assessment roll for its assessment purposes as soon as practical. Provided, however, the state tax commission may allow, in its discretion, a taxing district to use any other assessment roll the commission deems more appropriate.

SOURCES: Laws, 1980, ch. 505, § 18; Laws, 1983, ch. 471, § 12, eff from and after July 1, 1983.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Adoption by municipality of assessment roll prepared and furnished in connection with countywide reappraisal approved by state tax commission, see § 21-33-9.

Corrections or revisions of assessment roll adopted pursuant to this section, see § 21-33-10.

Article 3.

Assessment of Railroads and Other Public Service Corporations.

Sec.	
27-35-301.	State Tax Commission assessors of public service corporations.
27-35-303.	Schedules required to be filed.
27-35-305.	Penalty for failure to file schedule.
27-35-307.	Assessment and taxation of railroads; false or fraudulent schedules.
27-35-309.	Method for assessing companies listed in § 27-35-303; taxation of nuclear generating plants generally; distribution of revenues.
27-35-310.	Abandoned nuclear power plant property exempt from ad valorem taxation.
27-35-311.	Board of Tax Appeals to hear objections made by Department of Revenue; procedure.
27-35-313.	Rolls to be sent to counties.
27-35-315.	Duty of clerk of board of supervisors.
27-35-317.	Repealed.
27-35-319.	Assessing and taxing property of telephone companies located in not more than six counties.
27-35-321.	Corporation owning certain kind of toll bridge declared a public service corporation for tax purposes; assessment by the state tax commission.
27-35-323.	Repealed.
27-35-325.	Department of Revenue empowered to assess certain property escaping taxation.
27-35-327.	Records to be kept and preserved.
27-35-329.	Repealed.
27-35-331.	Public service corporations liable for ad valorem taxes on certain buildings and land.
27-35-333.	Properties of public service corporations subject to ad valorem taxes.
27-35-335.	Properties of public service corporations not subject to ad valorem taxes.
27-35-337.	Duty of public service corporations to report certain data to county tax assessors.
27-35-339.	Appraisal and assessment of certain property of public service corporations.
27-35-341.	No other assessment to be made for purposes of ad valorem taxes imposed by municipalities or other taxing districts.
27-35-343.	Years to which Sections 27-35-331 through 27-35-343 shall apply.

§ 27-35-301. State Tax Commission assessors of public service corporations.

The members of the State Tax Commission are constituted state assessors of railroads and other public service corporations, and they shall, upon the receipt or making of the schedules hereinafter provided for, assess the property of railroads, telegraph, telephone, sleeping car, express, electric power and light companies and other public service corporations liable to taxation in the state, affixing its true value so that such property shall bear its just proportion of taxation, taking into consideration the value of the franchise and the capital engaged in the business in this state. The state assessors of railroads and other public service corporations may adopt other and further rules necessary and proper to ascertain the value of property to be assessed by them, including the value of the franchise and amount of capital engaged in the business in this state. Provided, however, the members of the State Tax Commission shall be assessors of railroad and Class IV public service property, but shall not be the assessors of the types and kinds of properties owned by the public service corporations and appraised and assessed by county tax assessors pursuant to Sections 27-35-331 through 27-35-341.

SOURCES: Codes, Hemingway's 1921 Supp. § 7769l; 1930, § 3200; 1942, § 9825; Laws, 1918, ch. 138; Laws, 1986, ch. 346, § 7; Laws, 1991, ch. 385, § 3, eff from and after passage (approved March 15, 1991).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Municipal assessment of public utilities, see § 21-33-11.

Department of Revenue, see §§ 27-3-1 et seq.

State privilege taxes on public utilities, see §§ 27-15-151 through 27-15-165.

Exemption of railroad property from ad valorem taxation, see § 27-31-35.

How land assessment roll made up, see § 27-35-55.

Notice to tax commission of creation of, or changes in, taxing districts wherein public service corporations operate, see §§ 27-35-75, 27-35-79.

Notice to tax commission of changes in school districts in which public service corporations operate, see §§ 27-35-77, 27-35-79.

Requirement that companies listed in this section file a schedule of property ownership, see § 27-35-303.

Appraisal and assessment by county tax assessors of property of public service corporations which is not used in furnishing the services in which such corporations are engaged, see §§ 27-35-331 through 27-35-341.

Transportation companies operating or furnishing railroad cars, see §§ 27-35-501 et seq.

Collection of taxes on railroads, see § 27-41-19 et seq.

JUDICIAL DECISIONS

1. Constitutionality.
2. Construction and application.
3. —Void assessments.

1. Constitutionality.

Section 112, Constitution 1890, empowers the legislature to divest local taxing authorities of the right to assess separately segregated items of an integrated and unit operation such as an electric utility company operating and holding property in more than one county, and to vest authority in the state tax commission to assess all of such company's property as a constituent whole. Mississippi Power Co. v. City of Laurel, 201 Miss. 144, 28 So. 2d 750 (1947), error overruled, 201 Miss. 157, 29 So. 2d 313 (1947).

The Constitution permits a separate mode of assessment of all property owned by a railroad having property in more than one county. Gulf & S.I.R.R. v. Draughon, 148 Miss. 433, 114 So. 269 (1927).

Similar provisions under a former statute (Code 1892, §§ 3875, 3876), and a law relative to the assessment of back taxes by the state railroad commission without appeal (Laws of 1894, p. 29), did not violate the Constitution of 1890 as regards uniformity, equality, etc. Yazoo & Miss. V. Ry. v. Adams, 81 Miss. 90, 32 So. 937 (1902).

2. Construction and application.

Privately owned single customer natural gas pipeline companies, which did not sell to the public, did not hold certificates of public convenience and necessity from the Public Service Commission, and were not required to obtain any other franchise, license or certificate from the State of Mississippi in order to construct or operate their pipelines, were not "public service corporations" within the meaning of Mississippi Constitution Article 4, § 112 and §§ 27-35-301 et seq. Mississippi State Tax Comm'n v. Moselle Fuel Co., 568 So. 2d 720 (Miss. 1990).

Neither state tax commission, nor circuit court on appeal, had authority to fix lines between counties, except as incident in determining which county was entitled to taxes for current year on railroad trackage involved. Yalobusha County v. Tallahatchie County, 168 Miss. 526, 151 So. 723 (1934).

Order of state tax commission assessing and allocating railroad trackage to certain county was binding only for current year. Yalobusha County v. Tallahatchie County, 168 Miss. 526, 151 So. 723 (1934).

Motorbus company operating bus line held "other public service corporation" within statute constituting members of state tax commission state assessors of railroads and other public service corporations. Teche Lines v. Board of Supvrs., 165 Miss. 594, 142 So. 24 (1932).

The power to assess all property of a railroad company is in the state tax commission. Gulf & S.I.R.R. v. Draughon, 148 Miss. 433, 114 So. 269 (1927).

Where state tax commission has assessed a hotel as railroad property the city cannot claim the right to assess it on the ground that the company had no right to own it. Gulf & S.I.R.R. v. Draughon, 148 Miss. 433, 114 So. 269 (1927).

In assessing public corporations for taxation the state tax commission acts in a judicial capacity and is not a party to the litigation, and it cannot appeal from an adverse judgment in the circuit court on a certiorari proceeding. Illinois Cent. R.R. v. Miller, 141 Miss. 213, 106 So. 635 (1925).

A railroad commission, as assessor of railroad property, is without power to determine questions of exemption from taxation so as to render them res judicata. Yazoo & Miss. V. Ry. v. Adams, 81 Miss. 90, 32 So. 937 (1902).

Under the Constitution of 1890 § 112, and former statutory provisions relating to taxation of railroads (Code 1892, §§ 3675-3678), the railroad commission was without power to finally settle questions of exemption; the courts were required to do this. Yazoo & Miss. V. Ry. v. Adams, 81 Miss. 90, 32 So. 937 (1902).

3. —Void assessments.

Act of the state tax commission assessing the property of a railroad company for municipal taxation is void where it assesses the same property for state taxation at a lower rate. City of Hattiesburg v. New Orleans & N.E.R. Co., 141 Miss. 497, 106 So. 749 (1926), motion overruled, 143 Miss. 587, 108 So. 799 (1926).

A railroad company may recover from the municipality taxes paid to the municipality under protest on a void assessment of its property by the state tax commission. City of Hattiesburg v. New Orleans & N.E.R. Co., 141 Miss. 497, 106 So. 749 (1926), motion overruled, 143 Miss. 587, 108 So. 799 (1926).

And a general protest at the time of payment is sufficient. City of Hattiesburg v. New Orleans & N.E.R. Co., 141 Miss. 497, 106 So. 749 (1926), motion overruled, 143 Miss. 587, 108 So. 799 (1926).

Railroad paying under protest taxes on void assessment may recover them regardless of failure to appeal from order of state tax commission making assessment. City of Hattiesburg v. New Orleans & N.E.R. Co., 141 Miss. 497, 106 So. 749 (1926), motion overruled, 143 Miss. 587, 108 So. 799 (1926).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 344 et seq., 377 et seq.

CJS. 84 C.J.S., Taxation §§ 215 et seq., 648-657.

§ 27-35-303. Schedules required to be filed.

(1) Each person, firm, company or corporation owning and/or operating a railroad, oil or gas pipeline company, electric company or any other company listed in Section 27-35-301, owning property not situated wholly in one (1) county; and any telephone company owning property in more than six (6) counties shall, on or before the first Monday in April in each year, file with the State Tax Commission a complete schedule, under oath, on forms prescribed and furnished by the State Tax Commission, of all its property, real or personal, taxable and nontaxable, owned by it on the first day of the preceding January, setting forth therein the value of the whole, the total amount of capital stock, its par value and its actual value, and the value of its franchise, the gross amount of receipts in the year preceding; all real, personal or mixed property belonging to the company within the state, not enumerated, with its value; a list of all lands in this state owned, describing the same and giving the value thereof, the gross amount of receipts the year preceding earned within and from this state; and if any of said property is claimed to be exempt from taxation, it shall be separately stated and valued, and the law cited under which the claim is made. It shall not be necessary that a rendition on any motor vehicles be made as defined by the "Motor Vehicle Ad Valorem Tax Law of 1958." In addition to these required schedules, the State Tax Commission may require each person, firm, company or corporation to file with the State Tax Commission a copy of any annual report or form required to be filed by him with any federal regulatory agency. The State Tax Commission may grant an extension of up to thirty (30) days for the filing of the schedules required by this section.

(2) The State Tax Commission shall have the power to adopt, amend or repeal such rules and regulations as necessary to implement tax duties assigned to it in this section.

SOURCES: Codes, Hemingway's 1921 Supp § 7769m; 1930, § 3201; 1942, § 9826; Laws, 1918, ch. 138; Laws, 1958, ch. 549, § 6; Laws, 1989, ch. 517, § 2; Laws, 1997, ch. 319, § 1, eff from and after passage (approved March 14, 1997).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Department of Revenue assessment of companies listed in this section, see § 27-35-309.

Motor vehicle ad valorem tax provisions, see §§ 27-51-1 et seq.

JUDICIAL DECISIONS

1. In general.

The purpose of this section [Code 1942, § 9826], is to effect a complete disclosure of all taxable property, and as a means to this end the forms of the schedules are required to be prescribed and furnished by the tax commission. Thompson v. Craig, 196 Miss. 465, 17 So. 2d 439 (1944).

Where schedule forms supplied by the tax commission required that all rolling stock be included under the valuation of track mileage and taxpayer returned a valuation which the commission assessed as a unit of a going concern, having knowledge of the existence and value of taxpayer's sole locomotive, such assessment was conclusive that the locomotive in question was assessed and the taxes paid thereon. Thompson v. Craig, 196 Miss. 465, 17 So. 2d 439 (1944).

Where supervisors adjudged lots owned by trustee of railroad should be assessed by tax commission which was done and tax paid, state tax collector could not recover claimed back taxes regardless of errors of fact or law of board or commission, or whether assessment was void on ground lots were entirely disconnected from railroad's business. Gully v. Mississippi Valley Co., 181 Miss. 669, 180 So. 745 (1938).

Neither state tax commission, nor circuit court on appeal, had authority to fix lines between counties, except as incident in determining which county was entitled to taxes for current year on railroad trackage involved. Yalobusha County v. Tallahatchie County, 168 Miss. 526, 151 So. 723 (1934).

Order of state tax commission assessing and allocating railroad trackage to certain county was binding only for current year. Yalobusha County v. Tallahatchie County, 168 Miss. 526, 151 So. 723 (1934).

The legislature is authorized to provide for a special mode of assessment and valuation of railroads as is provided by the state tax commission. Illinois Cent. R.R. v. Miller, 141 Miss. 223, 106 So. 636 (1926).

An assessment made by the state tax commission on railroad property where proper returns have been made is res adjudicata as to the state and the railroad company. Illinois Cent. R.R. v. Miller, 141 Miss. 223, 106 So. 636 (1926).

§ 27-35-305. Penalty for failure to file schedule.

If any company, corporation, firm or person, who is required by law to render schedules of its, their or his property to the State Tax Commission, as provided by Section 27-35-303, Mississippi Code of 1972, for the purposes of assessment for taxation, shall fail, refuse or neglect to render the schedules, as required, such company, corporation, firm or person shall pay a penalty up to ten percent (10%) of the assessment as computed by the tax commission, and in case of such failure, refusal or neglect, the commission shall make out such schedules from the best information obtainable.

SOURCES: Codes, Hemingway's 1921 Supp § 7769n; 1930, § 3202; 1942, § 9827; Laws, 1918, ch. 138; Laws, 1989, ch. 517, § 3, eff from and after January 1, 1990.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Application of penalty provisions of this section for company's failure to render apportionment of assessed value, see § 27-35-309.

§ 27-35-307. Assessment and taxation of railroads; false or fraudulent schedules.

If in any case the state railroad assessors have reason to believe that any person, firm, company or corporation which under this chapter is to be assessed by the State Tax Commission has rendered a false or fraudulent schedule, so that an assessment predicated thereon would relieve such person, firm, company or corporation of a just share of taxation, the commission shall not, in making the assessment be bound thereby, but shall make out a proper schedule as if none had been rendered, first giving such person, company, firm or corporation five (5) days' notice to come forward at a time and place to be named, and show cause why such a course should not be pursued. Such notice shall be served and returned as a summons from a court, but the failure to receive such notice shall not render the assessment void.

SOURCES: Codes, 1892, § 3878; 1906, § 4385; Hemingway's 1917, § 7024; 1930, § 3203; 1942, § 9828; Laws, 1989, ch. 517, § 4, eff from and after January 1, 1990.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

JUDICIAL DECISIONS

1. In general.

Similar provisions under a former statute (Code 1892, §§ 3875, 3876), and a law relative to the assessment of back taxes by the state railroad commission without appeal (Laws of 1894, p. 29), did not violate the Constitution of 1890 as regards uniformity, equality, etc. Yazoo & Miss. V. Ry. v. Adams, 81 Miss. 90, 32 So. 937 (1902).

Under the Constitution of 1890 § 112, and such former statutory provisions, the railroad commission was without power to finally settle questions of exemption; the courts were required to do this. Yazoo & Miss. V. Ry. v. Adams, 81 Miss. 90, 32 So. 937 (1902).

§ 27-35-309. Method for assessing companies listed in § 27-35-303; taxation of nuclear generating plants generally; distribution of revenues.

(1) The Department of Revenue shall, if practicable, on or before the first Monday of June of each year, make out for each person, firm, company or corporation listed in Section 27-35-303, Mississippi Code of 1972, an assessment of the company's property, both real and personal, tangible and intangible. The Department of Revenue shall apportion the assessment of value of each company's property according to the provisions of this article, except as provided in subsection (3) of this section, as follows:

(a) When the property of such public service company is located in more than one (1) county in this state, the Department of Revenue shall direct the company to apportion the assessed value between the counties and municipalities and all other taxing districts therein, in the proportion which the property located therein bears to the entire value of the property of such company as valued by the department, so that to each county, municipality and taxing district therein, there shall be apportioned such part of the entire valuation as will fairly equalize the relative value of the property therein located to the whole value thereof.

(b) When the property of such public utility required to be assessed by the provisions of this article is located in more than one (1) state, the assessed value thereof shall be apportioned by the Department of Revenue in such manner as will fairly and equitably determine the principal sum for the value thereof in this state, and after ascertaining such value it shall be apportioned by them as herein provided.

The assessment roll shall contain all the property of any such public service company, railroad, person, firm or corporation and the value thereof, and so made that each county, municipality, and taxing district shall receive its just share of taxes proportionately to the amount of property therein situated.

(2)(a) The assessment when made shall remain open for thirty (30) days in the office of the Department of Revenue, and be for such time subject to the objections thereto which may be filed with the Executive Director of the Board of Tax Appeals; but real estate belonging to railroads and which forms no part of the road, and is wholly disconnected from its railroad business, shall not be assessed by the Department of Revenue, but shall be assessed as other real estate is assessed by the tax assessor of the county where situated.

(b) The apportionment of the assessed value as required by this section shall be filed with the Department of Revenue by such public service company on or before the first day of August in each year. If such company shall fail, refuse or neglect to render the apportionment of assessed value as required by this section, such company shall be subject to the penalties provided for in Section 27-35-305. The filing of an objection by such public service company shall not preclude such company from filing the property apportionment as required by this section.

(3) Any nuclear generating plant which is located in the state, which is owned or operated by a public utility rendering electric service within the state and not exempt from ad valorem taxation under any other statute and which is not owned or operated by an instrumentality of the federal government shall be exempt from county, municipal and district ad valorem taxes. In lieu of the payment of county, municipal and district ad valorem taxes, such public utility shall pay to the Department of Revenue a sum based on the assessed value of such nuclear generating plant in an amount to be determined and distributed as follows:

(a) The Department of Revenue shall annually assign an assessed value to any nuclear generating plant described in this subsection in the same manner as for ad valorem tax purposes by using accepted industry methods for appraising and assessing public utility property. The assessed value assigned shall be used for the purpose of determining the in-lieu tax due under this section and shall not be included on the ad valorem tax rolls of the situs taxing authority nor be subject to ad valorem taxation by the situs taxing authority nor shall the assessed value assigned be used in determining the debt limit of the situs taxing authority. However, the assessed value so assigned may be used by the situs taxing authority for the purpose of determining salaries of its public officials.

(b) On or before February 1, 1987, for the 1986 taxable year and on or before February 1 of each year through the 1989 taxable year, such utility shall pay to the Department of Revenue a sum equal to two percent (2%) of the assessed value as ascertained by the Department of Revenue, but such payment shall not be less than Sixteen Million Dollars ($16,000,000.00) for any of the four (4) taxable years; all such payments in excess of Sixteen Million Dollars ($16,000,000.00) for these four (4) taxable years shall be paid into the General Fund of the state. On or before February 1, 1991, for the 1990 taxable year and on or before February 1 of each year thereafter, such utility shall pay to the Department of Revenue a sum equal to two percent (2%) of the assessed value as ascertained by the Department of Revenue, but such payment shall not be less than Twenty Million Dollars ($20,000,000.00) for any taxable year for as long as such nuclear power plant is licensed to operate and is not being permanently decommissioned; all such payments in excess of Sixteen Million Dollars ($16,000,000.00) for taxable years 1990 and thereafter shall be paid as follows:

(i) An amount of Three Million Forty Thousand Dollars ($3,040,000.00) annually, beginning with fiscal year 1991, shall be transferred by the Department of Revenue to Claiborne County. Such payments may be expended by the Board of Supervisors of Claiborne County for any purpose for which a county is authorized by law to levy an ad valorem tax and shall not be included or considered as proceeds of ad valorem taxes for the purposes of the growth limitation on ad valorem taxes under Sections 27-39-305 and 27-39-321. However, should the Board of Supervisors of Claiborne County withdraw its support of the Grand Gulf Nuclear Station off-site emergency plan or otherwise fail to satisfy its off-site emergency plan commitments as determined by the Mississippi Emergency Management Agency and the Federal Emergency Management Agency, Five Hundred Thousand Dollars ($500,000.00) annually of the funds designated for Claiborne County as described by this subsection (i) shall be deposited in the Grand Gulf Disaster Assistance Fund as provided in Section 33-15-51.

(ii) An amount of One Hundred Sixty Thousand Dollars ($160,000.00) annually, beginning with fiscal year 1991, shall be transferred by the Department of Revenue to the City of Port Gibson, Mississippi. Such payments may be expended by the Board of Aldermen of the City of Port Gibson for any purpose for which a municipality is authorized by law to levy an ad valorem tax and shall not be included or considered as proceeds of ad valorem taxes for the purposes of the growth limitation on ad valorem taxes under Sections 27-39-305 and 27-39-321. However, should the Board of Aldermen of the City of Port Gibson withdraw its support of the Grand Gulf Nuclear Station off-site emergency plan or otherwise fail to satisfy its off-site emergency plan commitment, as determined by the Mississippi Emergency Management Agency and the Federal Emergency Management Agency, Fifty Thousand Dollars ($50,000.00) annually of the funds designated for the City of Port Gibson as described by this subsection (ii) shall be deposited in the Grand Gulf Disaster Assistance Fund as provided in Section 33-15-51.

(iii) The remaining balance of the payments in excess of Sixteen Million Dollars ($16,000,000.00) annually, less amounts transferred under (i) and (ii) of this subsection, beginning with fiscal year 1991, shall be allocated in accordance with subsection (3)(f) of this section.

(c) Pursuant to certification by the Attorney General to the State Treasurer and the State Tax Commission that the suit against the State of Mississippi pending on the effective date of House Bill 8, First Extraordinary Session of 1990, [Laws, 1990 Ex Session, Ch. 12, eff June 26, 1990], in the Chancery Court for the First Judicial District of Hinds County, Mississippi, styled Albert Butler et al v. the Mississippi State Tax Commission et al, has been voluntarily dismissed with prejudice as to all plaintiffs at the request of the complainants and that no attorney's fees or court costs have been assessed against the state and each of the parties, including Claiborne County and each municipality and school district located in the county, have signed and delivered to the Attorney General a full and complete release in favor of the State of Mississippi and its elected officials of all claims that have been asserted or may be asserted in the suit pending on the effective date of House Bill 8, First Extraordinary Session of 1990, [Laws, 1990 Ex Session, Ch. 12, eff June 26, 1990], in the Chancery Court for the First Judicial District of Hinds County, Mississippi, styled Albert Butler et al v. the Mississippi State Tax Commission et al, and the deposit into the State General Fund of in-lieu payments and interest thereon due the state under subsection (3)(b) of this section but placed in escrow because of the lawsuit described above, the state shall promptly transfer to the Board of Supervisors of Claiborne County out of the State General Fund an amount of Two Million Dollars ($2,000,000.00) which shall be a one-time distribution to Claiborne County from the state. Such payment may be expended by the Board of Supervisors of Claiborne County for any purposes for which a county is authorized by law to levy an ad valorem tax and shall not be included or considered as proceeds of ad valorem taxes for the purposes of the growth limitation on ad valorem taxes for the 1991 fiscal year under Sections 27-39-321 and 27-39-305.

(d) After distribution of the one-time payment to Claiborne County as set forth in subsection (3)(c) of this section, the Department of Revenue upon certification that the pending lawsuit as described in subsection (3)(c) of this section has been voluntarily dismissed shall promptly deposit an amount of Five Hundred Thousand Dollars ($500,000.00) into the Grand Gulf Disaster Assistance Trust Fund as provided for in Section 33-15-51, which shall be a one-time payment, to be utilized in accordance with the provisions of such section.

(e) After distribution of the one-time payment to Claiborne County as set forth in subsection (3)(c) of this section and the payment to the Grand Gulf Disaster Assistance Trust Fund as set forth in subsection (3)(d) of this section, the Department of Revenue upon certification that the pending lawsuit as described in subsection (3)(c) of this section has been voluntarily dismissed shall promptly distribute ten percent (10%) of the remainder of the prior payments remaining in escrow to the General Fund of the state and the balance of the prior payments remaining in escrow shall be distributed to the counties and municipalities in this state wherein such public utility has rendered electric service in the proportion that the amount of electric energy consumed by the retail customers of such public utility in each county, excluding municipalities therein, and in each municipality, for the next preceding fiscal year bears to the total amount of electric energy consumed by all retail customers of such public utility in the State of Mississippi for the next preceding fiscal year. The payments distributed to the counties and municipalities under this paragraph (e) may be expended by such counties and municipalities for any lawful purpose and shall not be included or considered as proceeds of ad valorem taxes for the purposes of the growth limitation on ad valorem taxes under Sections 27-39-321 and 27-39-305.

(f) After distribution of the payments for fiscal year 1991 as set forth in Section 19-9-151 and distribution of the payments as provided for in subsection (3)(b) of this section, the Department of Revenue shall distribute ten percent (10%) of the remainder of the payments to the General Fund of the state and the balance to the counties and municipalities in this state wherein such public utility renders electric service in the proportion that the amount of electric energy consumed by the retail customers of such public utility in each county, excluding municipalities therein, and in each municipality for the next preceding fiscal year bears to the total amount of electric energy consumed by all retail customers of such public utility in the State of Mississippi for the next preceding fiscal year.

(g) No county, including municipalities therein, shall receive in excess of twenty percent (20%) of the funds distributed under paragraph (f) of this subsection.

(h) The revenues received by counties and municipalities under paragraph (f) of this subsection shall not be included or considered as proceeds of ad valorem taxes for the purposes of the growth limitation on ad valorem taxes under Sections 27-39-305 and 27-39-321.

SOURCES: Codes, Hemingway's 1921 Supp § 7769o; 1930, § 3204; 1942, § 9829; Laws, 1918, ch. 138; Laws, 1926, ch. 127; Laws, 1932, ch. 291; Laws, 1986, ch. 507, § 1; Laws, 1989, ch. 517, § 5; Laws, 1990, ch. 524, § 2; Laws, 1990 Ex Sess, ch. 12, § 1; Laws, 2001, ch. 334, § 3; Laws, 2009, ch. 492, § 74, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Distribution of payments made pursuant to this section to counties in which nuclear generating plants are located, see § 19-9-151.

Municipal assessment of private car companies, see § 21-33-13.

Department of revenue, see § 27-3-1 et seq.

Board of tax appeals, see § 27-4-1 et seq.

Exemption of railroad property from ad valorem taxation, see § 27-31-35.

Assessing and taxing property of telephone companies located in not more than six counties, see § 27-35-319.

Applicability of this section to a countywide levy for the construction and maintenance of roads and bridges, see § 27-39-305.

Reduction in ad valorem tax levy commensurate with reduction in base revenue of any county where there is located a nuclear power plant on which tax is assessed under subsection (3) of this section, and related effect of that subsection if declared unconstitutional, see § 27-39-320.

Applicability of this section to an ad valorem tax levy, see § 27-39-320.

Applicability of this section to limitation on increases in property taxes, see § 27-39-321.

Collection of railroad taxes, see § 27-41-21.

Grand Gulf Disaster Assistance Trust Fund, see § 33-15-51.

Applicability of this section to a levy by the board of supervisors for the support of a special municipal separate school district, see § 37-57-105.

Reduction in ad valorem tax levy supporting school district, commensurate with reduction in base revenue of any county where there is located a nuclear power plant on which tax is assessed under subsection (3) of this section, and related effect of that subsection if it is declared unconstitutional, see § 37-57-105.

JUDICIAL DECISIONS

1. Constitutionality.
2. Construction and application.
3. —Powers as regards assessment.

1. Constitutionality.

circuit court properly dismissed the property owners' complaint for, inter alia, a judgment declaring that a statute granting a tax exemption for nuclear generating plants was unconstitutional because the owners' failed to establish standing inasmuch as their claims rested solely on the general and speculative conclusion that the statute was racially discriminatory by causing their property-tax liability to increase. Doss v. Claiborne Cnty. Bd. of Supervisors, — So. 3d —, 2017 Miss. App. LEXIS 171 (Miss. Ct. App. Mar. 28, 2017).

An amendment of § 27-35-309 exempting from county, municipal and district ad valorum taxes any in-state nuclear generating plant owned or operated by a public utility rendering electrical service within the state, was a general law within the meaning of Mississippi Constitution Article 4 § 87, rather than invalid local and private legislation, since it would "bring into its predicament" any privately owned nuclear facilities built in the future. Burrell v. Mississippi State Tax Comm'n, 536 So. 2d 848 (Miss. 1988).

Section 112 of the Constitution of 1890 provides a special railroad assessment, and the act of 1894 (Laws p. 29) provided for the assessment of back taxes by the railroad commission without appeal. Such denial of appeal violated no constitutional provision, although other taxpayers under general laws might appeal from the tribunals fixing their taxes, where the taxes were back taxes and not current taxes, since under the constitutional provision referred to, all railroad property is dealt with alike, and ample notice was given that under the law a railroad had the remedy by certiorari. Yazoo & Miss. V. Ry. v. Adams, 73 Miss. 648, 19 So. 91 (1895).

2. Construction and application.

Where supervisors adjudged lots owned by trustee of railroad should be assessed by tax commission which was done and tax paid, state tax collector could not recover claimed back taxes regardless of errors of fact or law of board or commission, or whether assessment was void on ground lots were entirely disconnected from railroad's business. Gully v. Mississippi Valley Co., 181 Miss. 669, 180 So. 745 (1938).

Under former statute requiring state railroad commission to assess property of railroads and other designated public utilities, the form of the assessments as to the several counties to be transmitted to the clerk of the board of supervisors, and requiring the clerk to make copies, but making no provision for his compensation, his compensation was governed by another statute declaring that the board of supervisors might allow the clerk a reasonable compensation for making copies of the assessment rolls. Board of Supvrs. v. King, 115 Miss. 521, 76 So. 543 (1917).

Capital invested in merchandise and manufacturing includes the pipes, hydrants, etc., of a waterworks company, but did not include solvent credits of the corporation they being a separate kind of property which should have been listed separately. Adams v. Vicksburg Waterworks Co., 94 Miss. 601, 47 So. 530 (1908).

The franchise of a corporation is personalty of a different kind from capital invested in merchandise and manufacturing, which franchise is taxable by itself. Adams v. Samuel R. Bullock & Co., 94 Miss. 27, 47 So. 527, 19 Am. Ann. Cas. 165 (1908).

Where an assessment has been made and taxes have been paid in the absence of fraud it is conclusive. Gulf & S.I.R.R. v. Adams, 88 Miss. 772, 38 So. 348 (1905).

The court will take judicial notice that railroads were assessed and have paid ad valorem taxes for previous years pursuant to assessment under this section [Code 1942, § 9829]. Gulf & S.I.R.R. v. Adams, 88 Miss. 772, 38 So. 348 (1905).

A tax of a certain amount per mile on railroad franchises without regard to varying conditions or values is not a property tax, but a privilege tax proper. Gulf & S.I.R.R. v. Adams, 88 Miss. 772, 38 So. 348 (1905).

By the "value of the franchise" which the railroad assessors were to take into consideration, under the former statute, was meant the value of the right of the companies to operate their railroads in the manner, on the conditions, and with the powers prescribed and granted in their charters. Gulf & S.I.R.R. v. Adams, 88 Miss. 772, 38 So. 348 (1905).

An assessment of back taxes by the railroad commission cannot be attacked collaterally on the ground of fraud alone. Yazoo & Miss. V. Ry. v. Adams, 73 Miss. 648, 19 So. 91 (1895).

3. —Powers as regards assessment.

Assessment of all property owned and operated by an electric utility company in a score of counties was the sole prerogative of the state taxing commission, thus voiding the separate assessment by a city of company property therein located. Mississippi Power Co. v. City of Laurel, 201 Miss. 144, 28 So. 2d 750 (1947), error overruled, 201 Miss. 157, 29 So. 2d 313 (1947).

Since the assessment of railroad property for taxation for state and all political subdivisions is conferred on the state tax commission, contract by municipality with individual to discover property which had escaped taxation, was void as being in excess of such municipality's authority, and individual could not enforce such contract for percentage of back taxes collected against railroad. Fitzgerald v. Town of Magnolia, 183 Miss. 334, 184 So. 59 (1938).

Neither state tax commission, nor circuit court on appeal, had authority to fix county lines except as incident to determining which county was entitled to taxes for current year. Yalobusha County v. Tallahatchie County, 168 Miss. 526, 151 So. 723 (1934).

State tax commissioner has power to assess electric power company only as to property not situated wholly in one county, and property wholly within one county may be assessed by county or city authorities. Gully v. Eastman-Gardiner Lumber Co., 168 Miss. 100, 151 So. 170 (1933).

The legislature having provided for the assessment of railroads by the railroad commission, the municipality could not make an independent assessment of its own. Yazoo & Miss. V. Ry. v. City of Vicksburg, 95 Miss. 701, 49 So. 185 (1909).

The railroad commission, acting as a board of railroad assessors, did not have jurisdiction to determine a claim of exemption interposed to assessment of taxes, and therefore their judgment touching the claim of exemption was void and open to collateral attack. Yazoo & Miss. V. Ry. v. Adams, 81 Miss. 90, 32 So. 937 (1902).

Former Code 1892, § 3875 empowering state railroad commission to assess railroad property, was prospective only, but under § 4 of the act of 1894 (p. 29), providing for the assessment of back taxes by the railroad commission without appeal, after notification by the state revenue agent the railroad commission was authorized to assess railroad property which had escaped taxation during any former year back to 1886, as well as during years subsequent to the adoption of the Code of 1892. Yazoo & Miss. V. Ry. v. Adams, 73 Miss. 648, 19 So. 91 (1895).

ATTORNEY GENERAL OPINIONS

County is not required to distribute any portion of its distribution paid by Grand Gulf Nuclear Generating Plant to State of Mississippi to County School District; further, County is not required to make pro rata distribution of such funds to District (withdrawing prior opinion to Self dated November 20, 1990). Wallace, July 8, 1992, A.G. Op. #92-0499.

Section 27-35-309(3)(f) and other pertinent statutory provisions provide no authority for cities or counties to appropriate their Grand Gulf money to school districts. Burrell, Jan. 5, 1994, A.G. Op. #93-0960.

Plain language of Section 27-35-309(3)(b) and Section 19-9-155 is sufficiently broad to allow Claiborne County, unlike counties receiving distributions pursuant to Section 27-35-309(3)(f), flexibility and discretion to allocate its in lieu payments among any one or more of various funds supported in whole or part by ad valorem taxes levied and collected by the county and therefore county had discretionary authority to allocate in lieu payments to public school district. Burell, Jan. 5, 1994, A.G. Op. #93-0960.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 336 et seq.

CJS. 84 C.J.S., Taxation §§ 648-657.

§ 27-35-310. Abandoned nuclear power plant property exempt from ad valorem taxation.

All nuclear power plant property that has been abandoned and written off the books of the public utility owning such property and is no longer considered operating property of such utility by the State Tax Commission or is being permanently decommissioned shall be exempted from all ad valorem taxes now levied or hereafter levied by the State of Mississippi, or any county, municipality, levee district, school or any other taxing district within the state.

SOURCES: Laws, 1990 Ex Sess, ch. 12, § 4, eff from and after passage (approved June 26, 1990).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-35-311. Board of Tax Appeals to hear objections made by Department of Revenue; procedure.

(1) It shall be the duty of the Board of Tax Appeals to hear and determine objections to assessments made by the Department of Revenue for ad valorem tax purposes. They may, if they think objections just, sustain the same and amend assessments, if necessary accordingly.

(2) Any objection shall be in writing and filed with the Executive Director of the Board of Tax Appeals within the thirty-day period set out in Section 27-35-309(2)(a). At the time of filing the objection with the Executive Director of the Board of Tax Appeals, the taxpayer shall also file a copy of his written objection with the Department of Revenue.

SOURCES: Codes, Hemingway's 1921 Supp § 7769p; 1930, § 3205; 1942, § 9830; Laws, 1918, ch. 138; Laws, 2009, ch. 492, § 75, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:
"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue, see § 27-3-1 et seq.

Board of tax appeals, see § 27-4-1 et seq.

Board of Tax Appeals to have jurisdiction to hear objection to an assessment by the Department of Revenue pursuant to this section, see § 27-4-3.

Objections to assessment roll generally, see § 27-35-89.

Objections to assessments against transportation companies operating or furnishing railroad cars, see § 27-35-517.

§ 27-35-313. Rolls to be sent to counties.

So soon as the assessment rolls have remained subject to objection for thirty (30) days, and when all objections, if any, are disposed of, the assessment rolls shall be approved by the Department of Revenue, and a certified copy of the assessment rolls shall be sent immediately to the clerks of the board of supervisors of the respective counties, who shall file and preserve it as a record.

SOURCES: Codes, Hemingway's 1921 Supp § 7769q; 1930, § 3206; 1942, § 9831; Laws, 1918, ch. 138; Laws, 2001, ch. 334, § 4; Laws, 2009, ch. 492, § 76, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Municipal assessment rolls, see § 21-33-5 et seq.

Department of revenue, see § 27-3-1 et seq.

§ 27-35-315. Duty of clerk of board of supervisors.

The clerk of the board of supervisors shall make one copy of the said assessment rolls, and shall certify and deliver the same to the tax collector which when done shall have the same force and effect as other certified copies of tax rolls placed in the hands of the tax collector.

SOURCES: Codes, Hemingway's 1921 Supp § 7769r; 1930, § 3207; 1942, § 9832; Laws, 1918, ch. 138.

Cross References — Clerk's duties with regard to assessment rolls, generally, see § 27-35-123.

Clerk's certification of county tax levies, see § 27-39-319.

§ 27-35-317. Repealed.

Repealed by Laws, 1991, ch. 385, § 6, eff from and after passage (approved March 15, 1991).

[Codes, Hemingway's 1921 Supp § 7769s; 1930, § 3208; 1942, § 9833; Laws, 1918, ch. 138; Laws, 1926, ch. 127; Laws, 1932, ch. 291]

Editor's Note — Former § 27-35-317 provided for assessment of certain companies owning property not wholly in one county in same manner as railroads.

§ 27-35-319. Assessing and taxing property of telephone companies located in not more than six counties.

Notwithstanding the provisions of Sections 27-35-31, 27-35-309, 27-35-317 and 27-35-323, when all the property of a telephone company is located in not more than six (6) counties, it shall be assessed and taxed as that of a person; and the laws, providing for the assessment and collection of taxes on the property of persons, shall apply to the assessment and collection of taxes on the property of such companies. All shares or certificates of stock issued by any such corporation or company shall be exempt from taxation and shall not be returned for assessment. Its land and tangible personal property shall be assessed and taxed where situated on the first day of January of the year.

SOURCES: Codes, 1942, § 9833.5; Laws, 1960, ch. 471; Laws, 1995, ch. 479, § 1; Laws, 2000, ch. 303, § 8, eff from and after July 1, 2000.

Editor's Note — Section 27-35-317 referred to in (1) was repealed by Laws of 1991, ch. 385, § 6, eff from and after passage (approved March 15, 1991).

Section 27-35-323 referred to in (1) was repealed by Laws of 1989, ch. 517, § 7, eff from and after January 1, 1990.

Laws of 1995, ch. 479, § 2, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before July 1, 1995, whether such claims, assessments, appeals, suits or actions have been begun before July 1, 1995, or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before July 1, 1995, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2000, ch. 303, § 11, provides:

"SECTION 11. If any material provision of this act is declared to be void, or if for any reason is declared to be invalid or of no effect, the remaining provisions of this act shall be void and of no effect."

Laws of 2000, ch. 303, § 12, provides:

"SECTION 12. Section 6 of this act shall be effective with respect to taxable services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2000, regardless of when such services are provided. Section 9 of this act shall take effect and be in force from and after January 1, 2001. The remaining provisions of this act shall take effect and be in force from and after July 1, 2000."

Cross References — Inapplicability of ad valorem taxes on certain buildings and land with respect to telephone companies whose properties are located in not more than six counties as provided in this section, see § 27-35-331.

ATTORNEY GENERAL OPINIONS

Section 27-35-319 (2)(a)(ii) [decided prior to 2000 amendment, which deleted former (2)] applies only to a company's real property that is used to provide services between local access and transport areas in the state or between two or more states. Therefore, a company's personal property would be considered as Class IV property and assessed as such. Young, August 14, 1995, A.G. Op. #95-0394.

Property described in Section 27-35-319(2)(a)(ii) [decided prior to 2000 amendment, which deleted former (2)] is property excluded from Sections 27-35-331 through 27-35-343 and therefore is property which should be assessed by the State Tax Commission. Long, September 18, 1995, A.G. Op. #95-0619.

§ 27-35-321. Corporation owning certain kind of toll bridge declared a public service corporation for tax purposes; assessment by the state tax commission.

Any corporation owning, possessing, holding or operating a toll bridge structure located partly but not wholly within one county of this state and any substantial part of which so situated in this state is used or operated, howsoever, by or in connection with any common carrier railroad, as an instrumentality or facility for the conduct by such common carrier railroad of interstate commerce or its interstate transportation business, shall be considered and the same is hereby declared and defined to be a public service corporation as to all of its property situated in this state and which is liable to taxation in this state; and such property shall be wholly and exclusively subject to valuation and assessment for the purposes of taxation by the state tax commission of Mississippi, which commission is by law constituted state assessor of railroads and other public service corporations. Such property of said corporation shall be assessed to the extent and in like manner as the property of other public service corporations and public utilities now subject to the authority and jurisdiction of said commission; and said toll bridge corporations shall make and file schedules in time and manner as provided by Sections 27-35-309, 27-35-317 and 27-35-323 and under penalties as therein provided.

Such property of all persons, partnerships or associations of persons, so owned, held, possessed, operated, situated and utilized, however, shall, likewise, be valued and assessed for the purposes of taxation by the said state tax commission of Mississippi.

SOURCES: Codes, 1942, § 9834; Laws, 1942, ch. 127.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error near the end of the first paragraph by substituting "Sections 27-35-309, 27-35-317 and 27-35-323" for "Sections 27-35-309, 27-35-317, 27-35-323." The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor's Note — For compact with Arkansas concerning the Greenville-Lake Village bridge, see Laws of 1942, ch. 287.

Section 27-35-317 referred to in this section was repealed by Laws of 1991, ch. 385, § 6, eff from and after passage (approved March 15, 1991).

Section 27-35-323 referred to in this section was repealed by Laws of 1989, ch. 517, § 7, eff from and after January 1, 1990.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-35-323. Repealed.

Repealed by Laws, 1989, ch. 517, § 7, eff from and after January 1, 1990.

[Codes, Hemingway's 1921 Supp § 7769u; 1930, § 3209; 1942, § 9835; Laws, 1918, ch. 138; Laws, 1926, ch. 127; Laws, 1932, ch. 291]

Editor's Note — Former § 27-35-323 provided for persons required to file schedules.

§ 27-35-325. Department of Revenue empowered to assess certain property escaping taxation.

The Department of Revenue is hereby authorized and empowered and it shall be its duty to assess any property required to be assessed by the Department of Revenue as the state assessor of railroads, which it discovers escaping taxation in former years by reason of not being assessed; and to assess or cause to be assessed and taxed, any such property which it discovers escaping taxation by reason of not being assessed in or for the benefit of any road district, school district, or other taxing district or municipality, although the property may have been assessed and taxed for state and general county taxes; however, the right to so assess property shall expire at the end of seven (7) years from the date when the right so to do first accrued. When any property is discovered escaping assessment and taxation which, under the law, is required to be assessed by the Department of Revenue as state assessor of railroads, the Department of Revenue shall assess the same for such purpose and for the years it has escaped taxation, and shall give notice by United States mail, or otherwise, by the Commissioner of Revenue of the Department of Revenue to the owner of the property, or agent, of such owner, showing what property has escaped assessment and for what years, and all other proper information, and the owner shall have thirty (30) days in which to file objections. The Department of Revenue shall deal with the assessment in all respects with the same powers as if made at the time regular assessment of such property is made, and shall have power to require such information as it may desire for the correct determination of all questions before it. When any objection is heard and determined, the Board of Tax Appeals shall by order approve or disapprove, or may modify the assessment, and make it final. If no objection is made in regard to the assessment or if the assessment is approved or modified by the Board of Tax Appeals, the Department of Revenue shall certify it to the clerk of the board of supervisors of the county or counties where the property is located, and such assessment shall be dealt with by the clerk and tax collector as is required in cases of assessments when made at the regular time. In all cases where suit is necessary, it shall be the duty of the Attorney General to represent the Department of Revenue whenever requested to do so.

SOURCES: Codes, Hemingway's 1917, § 7033; 1930, § 3226; 1942, § 9852; Laws, 1916, ch. 130; Laws, 1928, ch. 214; Laws, 1942, ch. 135; Laws, 1958, ch. 569; Laws, 2009, ch. 492, § 77, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Notice by municipal authorities to state railroad assessors of property of railroad or public service corporation escaping assessment, see § 21-33-55.

Department of revenue, see § 27-3-1 et seq.

Department of Revenue's investigation of property escaping taxation, see § 27-3-39.

Board of tax appeals, see § 27-4-1 et seq.

Assessment of omitted property, generally, see §§ 27-35-155, 27-35-157.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 700 et seq.

CJS. 84 C.J.S., Taxation § 607.

§ 27-35-327. Records to be kept and preserved.

Complete and full records shall be kept and preserved by the state tax commission of all things done under the authority vested in it as the state assessor of railroads, and public utilities.

SOURCES: Codes, Hemingway's 1921 Supp § 7769t; 1930, § 3210; 1942, § 9836; Laws, 1918, ch. 138.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-35-329. Repealed.

Repealed by Laws, 1983, ch. 471, § 26, eff from and after July 1, 1983. [En Laws, 1980, ch. 505, § 23]

Editor's Note — Former § 27-35-329 dealt with the formula for valuation of properties of public service corporations and other properties following reappraisal.

§ 27-35-331. Public service corporations liable for ad valorem taxes on certain buildings and land.

The public service corporations to which Sections 27-35-331 through 27-35-343 apply are persons, individuals, partnerships, corporations, associations or entities that own, control, manage or operate a business engaged in:

(a) The generation, manufacture, transmission or distribution of electricity to or for the public for compensation.

(b) The distribution or sale of natural or artificial gas to the public for compensation; provided, however, Sections 27-35-331 through 27-35-343 shall not apply to entities engaged in the interstate transmission of gas by pipeline.

(c) The transmission, conveyance or reception of any message over wire or by radio, or otherwise, of writing, signs, signals, pictures and sounds of all kinds by or for the public for compensation; provided, however, Sections 27-35-331 through 27-35-343 shall not apply to telephone companies whose properties are located in not more than six (6) counties as provided in Section 27-35-319, Mississippi Code of 1972.

SOURCES: Laws, 1986, ch. 346, § 1, eff from and after January 1, 1987.

Cross References — Assessment of property of public service corporations which is not subject to the provisions of §§ 27-35-331 through 27-35-343, see § 27-35-301.

ATTORNEY GENERAL OPINIONS

Property described in Section 27-35-319(2)(a)(ii) is property excluded from Sections 27-35-331 through 27-35-343 and therefore is property which should be assessed by the State Tax Commission. Long, September 18, 1995, A.G. Op. #95-0619.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 377-381.

CJS. 84 C.J.S., Taxation §§ 200-204.

§ 27-35-333. Properties of public service corporations subject to ad valorem taxes.

The properties of public service corporations which are subject to Sections 27-35-331 through 27-35-343 are limited to:

(a) Vacant and unimproved real estate owned in fee simple.

(b) Buildings and the land on which they are situated utilized solely for the purpose of housing the managerial offices of such corporations, and the office furniture and facilities located therein.

(c) Buildings and the land on which they are situated utilized for the warehousing or storage of materials and supplies; provided, however, Sections 27-35-331 through 27-35-343 do not apply to the materials, supplies, equipment and facilities warehoused or stored therein.

(d) Buildings and the land on which they are situated utilized for the purpose of conducting the merchandising and sale of appliances utilizing the utility service furnished by such entity, together with inventories of such goods and appliances.

SOURCES: Laws, 1986, ch. 346, § 2, eff from and after January 1, 1987.

Cross References — Assessment of property of public service corporations which is not subject to the provisions of §§ 27-35-331 through 27-35-343, see § 27-35-301.

Properties of public service corporations which are not subject to ad valorem taxes, see § 27-35-335.

Appraisal and assessment by county tax assessors of the property described in this section, see § 27-35-339.

ATTORNEY GENERAL OPINIONS

There is no provision in Miss. Code Section 27-35-333 for "property not used to provide services of the corporation". Welch, Feb. 3, 1993, A.G. Op. #93-0016.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 377-381.

CJS. 84 C.J.S., Taxation §§ 200-204.

§ 27-35-335. Properties of public service corporations not subject to ad valorem taxes.

Sections 27-35-331 through 27-35-343 do not apply to properties owned by such public service corporations utilized in the furnishing of the utility service in which such public service corporations are engaged. This exclusion includes, but is not restricted to, the following: electric generating plants and related facilities; electric transmission and distribution facilities; electric substations; telephone exchanges; communication facilities by means of which communication service is effected; communication relay facilities; gas mains, pumping stations; metering facilities; compression stations; all facilities and equipment by means of which gas is received from the supplier and delivered to the consumer. It is the intent of Sections 27-35-331 through 27-35-343 to vest in county tax assessors the jurisdiction to assess only those types and kinds of properties enumerated in Section 27-35-333, and no other.

SOURCES: Laws, 1986, ch. 346, § 3, eff from and after January 1, 1987.

Cross References — Assessment of property of public service corporations which is not subject to the provisions of §§ 27-35-331 through 27-35-343, see § 27-35-301.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 377-381.

CJS. 84 C.J.S., Taxation §§ 200-204.

§ 27-35-337. Duty of public service corporations to report certain data to county tax assessors.

It shall be the duty of public service corporations subject to Sections 27-35-331 through 27-35-343 to report to the county tax assessor of the counties in which any property subject to Sections 27-35-331 through 27-35-343 is located the same information and data, at the same time as such data and information has heretofore been reported to the State Tax Commission. Reports to the State Tax Commission may, after the effective date of Sections 27-35-331 through 27-35-343, eliminate the data and information which will be reported to county tax assessors pursuant to this section.

SOURCES: Laws, 1986, ch. 346, § 4, eff from and after January 1, 1987.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — County tax assessors generally, see § 27-1-1 et seq.

Department of Revenue generally, see § 27-3-1 et seq.

Assessment of property of public service corporations which is not subject to the provisions of §§ 27-35-331 through 27-35-343, see § 27-35-301.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 377-381.

CJS. 84 C.J.S., Taxation §§ 200-204.

§ 27-35-339. Appraisal and assessment of certain property of public service corporations.

All property, as described in Section 27-35-333, of public service corporations subject to Sections 27-35-331 through 27-35-343 shall be appraised by county tax assessors and assessed in proportion to its true value in the same manner as is provided by law for other properties subject to the jurisdiction of the county tax assessors and at the same assessment ratio as established for other public service corporation property.

SOURCES: Laws, 1986, ch. 346, § 5, eff from and after January 1, 1987.

Cross References — Assessment of property of public service corporations which is not subject to the provisions of §§ 27-35-331 through 27-35-343, see § 27-35-301.

ATTORNEY GENERAL OPINIONS

Mississippi Code Section 27-35-339 provides that all public service corporation property shall be appraised by county tax assessors; this property shall be assessed in proportion to its true value in same manner as is provided by law for other properties subject to jurisdiction of county tax assessors. Welch, Feb. 3, 1993, A.G. Op. #93-0016.

Mississippi Code Section 27-35-339 provides that public service corporation property shall be appraised and assessed "at the same assessment ratio as established for other public service corporation property." Welch, Feb. 3, 1993, A.G. Op. #93-0016.

RESEARCH REFERENCES

ALR. Requirement of full-value real property taxation assessments. 42 A.L.R.4th 676.

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 377-381.

CJS. 84 C.J.S., Taxation §§ 200-204.

§ 27-35-341. No other assessment to be made for purposes of ad valorem taxes imposed by municipalities or other taxing districts.

With respect to properties appraised and assessed by county tax assessors pursuant to Sections 27-35-331 through 27-35-343, the assessments so made shall constitute the assessment thereof for purposes of ad valorem taxes imposed by municipalities or other taxing districts on properties located therein. Assessing jurisdiction over such properties is specifically not conferred upon municipal authorities or authorities of other taxing districts.

SOURCES: Laws, 1986, ch. 346, § 6, eff from and after January 1, 1987.

Cross References — Assessment of property of public service corporations which is not subject to the provisions of §§ 27-35-331 through 27-35-343, see § 27-35-301.

ATTORNEY GENERAL OPINIONS

Assessing jurisdiction over properties owned by public service corporations is specifically not conferred upon municipal authorities or authorities of other taxing districts; city was prohibited under terms of statute from assessing in any manner public service corporation property located within municipal boundaries, although property was improperly classified for seven years. Dreyfus, Jan. 17, 1990, A.G. Op. #90-0004.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 377-381.

CJS. 84 C.J.S., Taxation §§ 200-204.

§ 27-35-343. Years to which Sections 27-35-331 through 27-35-343 shall apply.

Sections 27-35-331 through 27-35-343 shall apply to the assessment of public service corporation properties for the calendar year 1987 and thereafter.

SOURCES: Laws, 1986, ch. 346, § 8; Laws, 1987, ch. 348, eff from and after passage (approved March 18, 1987).

Cross References — Assessment of property of public service corporations which is not subject to the provisions of §§ 27-35-331 through 27-35-343, see § 27-35-301.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 377-381.

CJS. 84 C.J.S., Taxation §§ 200-204.

ARTICLE 5.

ASSESSMENT OF TRANSPORTATION COMPANIES OPERATING OR FURNISHING RAILROAD CARS.

SEC.
27-35-501. Assessment by Commissioner of Revenue.
27-35-503. Company defined.
27-35-505. Freight line company defined.
27-35-507. Equipment company defined.
27-35-509. Companies to make report to state tax commission; information to be given.
27-35-511. Tax commission may call for additional information.
27-35-513. Failure to report; penalty.
27-35-515. Exemptions; payments in lieu of taxes.
27-35-517. Objections to assessments.
27-35-519. Clerks of board of supervisors to apportion payments between municipalities and taxing districts.
27-35-521 through 27-35-523. Repealed
27-35-525. Railroads to file reports.
27-35-527. Failure to report; penalty.
27-35-529. Repealed.
27-35-531. Collection of taxes owed on railroad cars.

§ 27-35-501. Assessment by Commissioner of Revenue.

It shall be the duty of the Commissioner of Revenue, constituting the state assessor of railroads and other public service corporations, to annually assess for taxation the property of the persons, firms, partnerships, companies, associations, or corporations, as hereinafter defined, engaged in the business of operating, furnishing or leasing cars for the transportation of freight, or to be used in the operation of any railway line or lines wholly or partially within this state.

SOURCES: Codes, 1930, § 3211; 1942, § 9837; Laws, 1926, ch. 129; Laws, 2009, ch. 492, § 78, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

Exemptions and in lieu of taxes applicable to rail car companies, see § 27-35-515.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 353 et seq.

§ 27-35-503. Company defined.

The word "company" as used in the following sections shall be deemed and construed to mean any person, firm, partnership, company, association, or corporation engaged in operating, furnishing, or leasing cars, as defined and described in Sections 27-35-505 and 27-35-507, whether formed or organized under the laws of this state, or any other state or territory, or foreign country.

SOURCES: Codes, 1930, § 3212; 1942, § 9838; Laws, 1926, ch. 129.

§ 27-35-505. Freight line company defined.

Every company engaged in the business of operating cars, not otherwise listed for taxation or taxed in Mississippi, for the transportation of freight, whether such freight be owned by such company, or any other person or company, over any railway line or lines, in whole or in part within this state, such line or lines not being owned, leased, or operated by such company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture or refrigerator cars, or by some other name, shall be deemed to be a freight line company.

SOURCES: Codes, 1930, § 3213; 1942, § 9839; Laws, 1926, ch. 129.

§ 27-35-507. Equipment company defined.

Every company engaged in the business of furnishing or leasing cars of whatsoever kind or description, to be used in the operation of any railway line or lines, wholly or partially within this state, such line or lines not being owned, leased or operated by such company, and such cars not being otherwise listed for taxation in Mississippi shall be deemed to be an equipment company.

SOURCES: Codes, 1930, § 3214; 1942, § 9840; Laws, 1926, ch. 129.

§ 27-35-509. Companies to make report to state tax commission; information to be given.

Every company as above defined doing business or owning cars which are operated in this state, shall, annually, on or before the first day of April, in each year, make out and deliver to the state tax commission a statement, verified by oath of an officer or agent of such company, making such statement, showing as of the first day of January, of the year in which the statement is rendered, the following:

(1) The name of the company.

(2) The nature of the company, whether a person, firm, partnership, company, association or corporation, and under the laws of what state organized.

(3) The location of its principal office, or place of business.

(4) The name and post-office address of its president, secretary, treasurer, auditor, other principal officers.

(5) The name and post office address of the principal officer or managing agent of the company in Mississippi, if any.

(6) The aggregate number of miles traveled within the State of Mississippi by its cars during the preceding calendar year and the aggregate number of miles over each railroad in the state; and the total number of miles traveled by its cars during the preceding calendar year wherever operated.

(7) The average number of miles traveled by the cars of each class of its cars during the preceding year. The number of cars necessary for the mileage

traveled within the State of Mississippi, under the circumstances that ordinarily attend the use of such cars, and where different classes of cars are used by said company, as to the matters embraced in this and the preceding paragraph, it shall furnish the required information as to each class of said cars on the forms prescribed and furnished by the State Tax Commission.

(8) The actual cash value on the first day of January next preceding, of the said number of cars necessary to provide for the mileage to be reported as required by paragraph (6) of this section.

(9) The real estate, personal property, structures, machinery, fixtures, and appliances, owned by said company, within the state, and the location and the actual value thereof, and in what county, municipality, road district, school district or other taxing district where the same was located on the first day of January next preceding.

The State Tax Commission may grant an extension of up to thirty (30) days for the filing of the statements required by this section.

SOURCES: Codes, 1930, § 3215; 1942, § 9841; Laws, 1926, ch. 129; Laws, 1997, ch. 319, § 2, eff from and after passage (approved March 14, 1997).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Penalty for failure to file required statements on or before the time required by this section, see § 27-35-513.

§ 27-35-511. Tax commission may call for additional information.

Upon the filing of such statements the state tax commission shall examine each of them and if it shall deem the same insufficient, or if they fail to fully set out the matters required to be reported, or if the state tax commission desires any other or further information, it shall require such officer, or agent, to make such other and further statements as to such matters as it may deem proper.

SOURCES: Codes, 1930, § 3216; 1942, § 9842; Laws, 1926, ch. 129.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-35-513. Failure to report; penalty.

If any company shall fail, or refuse, to make and file any statements required by law or any other statement demanded by the State Tax Commission on or before the time required by Section 27-35-509, Mississippi Code of 1972, such company shall pay a penalty of up to ten percent (10%) on the tax as computed by the State Tax Commission, and in case of such failure, neglect or refusal, the commission shall make out an assessment against the company or companies, from the best information available.

SOURCES: Codes, 1930, § 3217; 1942, § 9843; Laws, 1926, ch. 129; Laws, 1989, ch. 477, § 1, eff from and after October 1, 1989.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-35-515. Exemptions; payments in lieu of taxes.

Any railcar company required to be assessed under Section 27-35-501, Mississippi Code of 1972, shall be exempt from county, municipal and district ad valorem taxes. In lieu of the payment of ad valorem taxes, such company shall pay to the State Tax Commission a sum based upon the assessed value of the company in an amount to be determined and distributed as follows:

(a) The State Tax Commission shall annually assign an assessed value to any railcar company described in Section 27-35-501, Mississippi Code of 1972. In determining this assessed value, the commission shall consider the value of the company's cars apportioned to Mississippi and, among other things, the proportion of the total number of car miles within the state during the preceding year to the total number of such car miles during the same period, both within and without the state.

(b) On or before the first day of December for the year applicable, such company shall pay to the State Tax Commission a sum equal to the assessed value of that company's railcars apportioned to Mississippi multiplied by a rate as determined by the tax commission comprised of applicable statewide averages of county and municipal millages.

(c) The State Tax Commission shall have the power to adopt, amend or repeal rules and regulations necessary to implement the duties assigned to the commission in this section.

(d) Funds collected under this section shall be distributed to the respective counties of the state in proportion to the number of miles of railroad in the respective county to the total number of miles of railroad in the entire state. The State Tax Commission shall retain three percent (3%) of the funds collected under this section to defray the cost of collection and distribution of such funds.

SOURCES: Codes, 1930, § 3218; 1942, § 9844; Laws, 1926, ch. 129; Laws, 1930, ch. 230; Laws, 1989, ch. 477, § 2; Laws, 2002, ch. 416, § 1, eff from and after July 1, 2002.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-35-517. Objections to assessments.

(1) The assessment when made and completed shall remain open for thirty (30) days for inspection in the offices of the Department of Revenue and be subject to objections by the railcar companies for the same time period. The Board of Tax Appeals shall hear all objections, and it may increase or decrease any assessment if such action appears to be necessary and proper.

(2) Any objection shall be in writing and filed with the Executive Director of the Board of Tax Appeals within the thirty-day period set out in subsection (1) of this section for objections. At the time of filing the objection with the Executive Director of the Board of Tax Appeals, the taxpayer shall also file a copy of his written objection with the Department of Revenue.

SOURCES: Codes, 1930, § 3219; 1942, § 9845; Laws, 1926, ch. 129; Laws, 1989, ch. 477, § 3; Laws, 2002, ch. 416, § 2; Laws, 2009, ch. 492, § 79, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

Board of Tax Appeals to have jurisdiction to hear objection to an assessment by the Department of Revenue pursuant to this section, see § 27-4-3.

Objections to assessment roll generally, see § 27-35-89.

Objections to assessments of railroads and public service corporations, see § 27-35-311.

§ 27-35-519. Clerks of board of supervisors to apportion payments between municipalities and taxing districts.

Payments as determined by the State Tax Commission shall be sent to the clerk of the board of supervisors of the counties of the state to which payments have been allocated, and the respective clerks shall apportion the county payment to the municipalities and other taxing districts in proportion to the number of miles of railroad in the municipality or other taxing districts to the number of miles of railroad in the entire county.

SOURCES: Codes, 1930, § 3220; 1942, § 9846; Laws, 1926, ch. 129; Laws, 1930, ch. 230; Laws, 1989, ch. 477, § 4, eff from and after October 1, 1989.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Municipal assessments, see §§ 21-33-5 et seq.

§§ 27-35-521 through 27-35-523. Repealed.

Repealed by Laws, 1989, ch. 477, § 5, eff from and after October 1, 1989.

§ 27-35-521. [Codes, 1930, § 3221; 1942, § 9847; Laws, 1926, ch. 129; Laws, 1968, ch. 361, § 38]

§ 27-35-523. [Codes, 1930, § 3222; 1942, § 9848; Laws, 1926, ch. 129; Laws, 1968, ch. 361, § 39]

Editor's Note — Former § 27-35-521 provided for clerk to certify assessment to tax collector.

Former § 27-35-523 provided for the tax collector to determine taxes due.

§ 27-35-525. Railroads to file reports.

It shall be the duty of all railroads operating in the State of Mississippi to furnish to the Mississippi state tax commission, on blanks to be furnished by the said commission to the railroad companies operating in the State of Mississippi, a true and accurate record of the car mileage made by the cars of the said companies, as defined above, over their rails within the State of Mississippi during the preceding calendar year. Said reports shall be duly attested by the proper officers of said railroad companies and shall be filed in the office of the Mississippi Tax Commission on or before the first day of May of each calendar year, or as soon thereafter as they can practically be compiled. Said reports shall become delinquent on and after the first day of June of the year in which they are due, and the officers of any railroad company failing to make the reports hereinbefore provided shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding one hundred dollars, or in default of payment thereof imprisoned not exceeding thirty days.

SOURCES: Codes, 1930, § 3223; 1942, § 9849; Laws, 1926, ch. 129.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-35-527. Failure to report; penalty.

Any company, failing to make a report to the Mississippi Tax Commission as herein required, or which shall fail to comply with any of the above provisions, shall be prohibited from doing business in the State of Mississippi, or operating its rolling stock over any railroad in the State of Mississippi; and it shall be the duty of the chancery court of Hinds County, upon application of the state tax commission, to issue an injunction prohibiting all such companies who have failed or refused to comply with the provisions of this article from further operating their rolling stock over any railroad in the State of Mississippi. Provided that all such companies shall have the right to have the injunction issued as above mentioned, dissolved on showing to the court that they have complied with the provisions of this article.

SOURCES: Codes, 1930, § 3224; 1942, § 9850; Laws, 1926, ch. 129.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-35-529. Repealed.

Repealed by Laws, 1989, ch. 477, § 5, eff from and after October 1, 1989.

[Codes, 1930, § 3225; 1942, § 9851; Laws, 1926, ch. 129; Laws, 1968, ch. 361, § 40]

Editor's Note — Former § 27-35-529 provided for the tax collector to enforce payment.

§ 27-35-531. Collection of taxes owed on railroad cars.

All taxes for which any company is liable under the provisions of this article shall be collected and recovered by the State Tax Commission in the same manner provided by law for the collection of sales taxes; and all administrative provisions of the Mississippi Sales Tax Law, including those which fix damages, penalties and interest for nonpayment of taxes, failure to file returns, and for other noncompliance with the provisions of such chapter, and all other requirements and duties imposed upon taxpayers, shall apply to all persons liable for taxes under the provisions of this article and the commission shall exercise all the power and authority and perform all the duties with respect to taxpayers under this article as are provided in the sales tax law, except that in cases of conflict, then the provisions of this article or any other title or chapter which imposes a tax on rail cars shall control.

SOURCES: Laws, 1991, ch. 385, § 4, eff from and after passage (approved March 15, 1991).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

ARTICLE 7.

TAXATION OF AIRLINE COMPANY AIRCRAFT.

SEC.
27-35-701. Definitions.
27-35-703. Assessment of aircraft; airline companies to annually file schedule of aircraft operated within the state; objections to assessments to be heard by Board of Tax Appeals.
27-35-705. Apportionment of valuation of aircraft to Mississippi.
27-35-707. Further apportionment of valuation of aircraft to local taxing entity.
27-35-709. Local levy and collection of tax on apportioned valuation.
27-35-711. Tax to be in lieu of all other ad valorem taxes.

§ 27-35-701. Definitions.

As used in this article, the words shall have the following meanings:

(a) "Aircraft" means any contrivance, fully equipped for flight, used or designed for navigation or flight through the air.

(b) "Airline company" means any person who undertakes, directly or indirectly, to engage in the scheduled transportation by aircraft of persons or property for hire in interstate, intrastate or international transportation.

(c) "Operated" or "operation" means regularly scheduled landings or takeoffs of aircraft.

(d) "Commission" or "department" means the Department of Revenue.

(e) "Person" means any individual, corporation, firm, partnership, company or association, and includes a guardian, trustee, executor, administrator, receiver, conservator or any person acting in a fiduciary capacity therefor.

SOURCES: Codes, 1942, § 9853-01; Laws, 1968, ch. 594, § 1; Laws, 2009, ch. 492, § 80, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an

administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

Exemption of airline company aircraft from registration requirements, see § 61-15-5.

§ 27-35-703. Assessment of aircraft; airline companies to annually file schedule of aircraft operated within the state; objections to assessments to be heard by Board of Tax Appeals.

(1) The department shall annually assess, adjust, equalize and apportion the valuation of all aircraft of each airline company of a type or model operated in this state by such airline company by such type or model. Such aircraft shall be valued by the department in the same manner as other personal property in the state is valued.

(2) Each airline company shall file with the department, on or before the first Monday in April of each year, a complete schedule of all aircraft of a type or model operated in this state by such company. Such schedule shall be made under oath on forms prescribed and furnished by the department. If any airline company shall fail, refuse or neglect to file the required schedules, such company may be penalized in the manner provided for in Section 27-35-305.

(3) The assessment when made and completed shall remain open for thirty (30) days for inspection in the offices of the Department of Revenue and be subject to objections by the airline companies for the same time period. The Board of Tax Appeals shall hear all objections, and it may increase or decrease any assessment if such action appears to be necessary and proper.

(4) Any objection shall be in writing and filed with the Executive Director of the Board of Tax Appeals within the thirty-day period set out in subsection (3) of this section for objections. At the time of filing the objection with the Executive Director of the Board of Tax Appeals, the taxpayer shall also file a copy of his written objection with the Department of Revenue.

SOURCES: Codes, 1942, § 9853-02; Laws, 1968, ch. 594, § 2; Laws, 2002, ch. 344, § 1; Laws, 2009, ch. 492, § 81, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an

administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

Board of Tax Appeals to have jurisdiction to hear objection to an assessment by the Department of Revenue pursuant to this section, see § 27-4-3.

Assessment of personal property generally, see § 27-35-15.

Taxpayer's valuation of property, see § 27-35-29.

Penalty for failure to file schedule, see § 27-35-305.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 336 et seq., 363.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 89 (complaint, petition, or declaration for refund of property taxes because of wrongful assessment of airplane use as part of fleet in interstate commerce).

§ 27-35-705. Apportionment of valuation of aircraft to Mississippi.

The valuation of such aircraft apportioned to this state shall be determined by the commission to be the proportion of the total valuation of such aircraft determined on the basis of the arithmetical average of the following two ratios:

(a) The ratio which the total time scheduled on the ground within this state of such aircraft during the preceding calendar year bears to the total time scheduled on the ground within and without this state of such aircraft during the preceding calendar year.

(b) The ratio which the total mileage scheduled within this state of such aircraft operated in this state during the preceding calendar year bears to the total mileage scheduled within and without this state of such aircraft during the preceding calendar year.

SOURCES: Codes, 1942, § 9853-03; Laws, 1968, ch. 594, § 3, eff from and after passage (approved July 30, 1968).

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 343.

CJS. 84 C.J.S., Taxation §§ 473, 474.

§ 27-35-707. Further apportionment of valuation of aircraft to local taxing entity.

The aggregate value of the aircraft of an airline company determined under the provisions of Section 27-35-705 is further apportioned to the local taxing entity or entities in which such aircraft operated during the preceding calendar year. This apportionment shall be made on the ratio which the number of operations of such aircraft in the local taxing entity bears to the total number of operations of such aircraft within this state during the preceding calendar year.

SOURCES: Codes, 1942, § 9853-04; Laws, 1968, ch. 594, § 4, eff from and after passage (approved July 30, 1968).

RESEARCH REFERENCES

CJS. 84 C.J.S., Taxation §§ 473, 474.

§ 27-35-709. Local levy and collection of tax on apportioned valuation.

The local taxing entity or entities to which the value of aircraft is apportioned under the provisions of Section 27-35-707 shall levy and collect a tax upon such apportioned valuation as it would upon any other taxable property subject to taxation by that entity or entities.

SOURCES: Codes, 1942, § 9853-05; Laws, 1968, ch. 594, § 5, eff from and after passage (approved July 30, 1968).

Cross References — Exemption of airline company aircraft from registration requirements, see § 61-15-5.

§ 27-35-711. Tax to be in lieu of all other ad valorem taxes.

The ad valorem taxation authorized by this article shall be in lieu of all other ad valorem taxes upon the aircraft of airline companies.

SOURCES: Codes, 1942, § 9853-06; Laws, 1968, ch. 594, § 6, eff from and after passage (approved July 30, 1968).

Cross References — Exemption of airline company aircraft from registration requirements, see § 61-15-5.

CHAPTER 37

Ad Valorem Taxes—Payments in Lieu of Taxes

Article 1. Federal Lands 27-37-1
Article 3. Tennessee Valley Authority 27-37-301

ARTICLE 1.

FEDERAL LANDS.

SEC.
27-37-1. Definitions.
27-37-3. Payments in lieu of taxes; agreements with United States.
27-37-5. Agreement; notice to subdivisions.
27-37-7. Statement by county auditor; receipt.
27-37-9. Apportionment of funds.
27-37-11. Requests for payments by subdivisions.
27-37-13. Deposit of funds.
27-37-15. Basis of payments.
27-37-17. Duties of subdivisions regarding provision of services.
27-37-19. Tax commission to prepare roll of federal lands.
27-37-21. Duty of assessor; valuation of lands.
27-37-23. Roll; copies to counties; revision.
27-37-25. Roll; comparison and entry on county roll.
27-37-27. Roll; years when land not assessed.
27-37-29. Tax commission to request payment; other powers.
27-37-31. Agreements to be filed with treasurer; credit of funds.

§ 27-37-1. Definitions.

The following definitions shall be applied to the terms used in this article:

(a) "Agreement" shall mean contract, and shall include any renewal or renewals and alterations of a contract.

(b) "Political subdivisions" shall mean any county, municipality, levee district, drainage district, road district, consolidated school district, special consolidated school district, municipal separate school district, rural separate school district, common school district, or other agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied.

(c) "Services" shall mean such public and municipal functions as are performed for property in, and for persons residing within, a political subdivision.

(d) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States located within this state and a political subdivision, and shall include persons inhabiting such project.

(e) "Governing body" shall mean the board, body or persons in which is vested the power to levy taxes of a political subdivision as a body corporate, or otherwise.

(f) The words "head of family" shall have the same meaning as under the Homestead Exemption Law.

SOURCES: Codes, 1942, § 9854; Laws, 1940, ch. 293.

Cross References — Tax exemption of lands of the United States, see § 3-5-7.
Definition of "head of family" under homestead exemption law, see § 27-33-13.
Payments in lieu of taxes by housing authorities, see § 43-33-37.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation § 158 et seq.
CJS. 84 C.J.S., Taxation § 241 et seq.

§ 27-37-3. Payments in lieu of taxes; agreements with United States.

The governing body of any county in this state is hereby authorized and empowered, (a) to make requests of the United States for and on behalf of the county and other political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for the payment of such sums in lieu of taxes as the United States may agree to pay, and (b) to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such other political subdivisions for the benefit of a project, and for the payment by the United States to the county, in one or more installments, of sums in lieu of taxes. Except in the case of a municipal separate school district, the governing body of the municipality is authorized and empowered to make agreements for payments in lieu of school taxes.

SOURCES: Codes, 1942, § 9855; Laws, 1940, ch. 293.

§ 27-37-5. Agreement; notice to subdivisions.

Each agreement entered into pursuant to Section 27-37-3 shall contain the names of the political subdivisions with respect to which it is consummated and a statement of the proportionate share of the payment by the United States to which each political subdivision shall be entitled. The governing body shall immediately notify each political subdivision of the county with respect to which an agreement is entered into, of the consummation thereof.

SOURCES: Codes, 1942, § 9856; Laws, 1940, ch. 293.

§ 27-37-7. Statement by county auditor; receipt.

On or before the date on which payment of sums in lieu of taxes is due, the county auditor shall present a statement to the United States, in the name of the county, in the amount of such payment. Whenever such payment is received, the county auditor shall issue a receipt therefor in the name of the county, for the political subdivisions included in the agreement.

SOURCES: Codes, 1942, § 9857; Laws, 1940, ch. 293.

ATTORNEY GENERAL OPINIONS

If the board of supervisors finds that the assessment of 2002 taxes was in error due to the bankruptcy and void tax sales, the board may use this section to refund the difference in the amount actually paid for the 2002 taxes versus the amount that would have been paid if the property had been assessed as Class 1 property with homestead exemption. Hollimon, July 16, 2004, A.G. Op. #04-0239.

Where property should not have been sold for taxes after the date of bankruptcy and penalties and interest should not have accrued, the board of supervisors may authorize a refund for overpayment of the interest and penalties which accrued after the date of the bankruptcy filing and which have been paid through redemption of the tax sale. Hollimon, July 16, 2004, A.G. Op. #04-0239.

§ 27-37-9. Apportionment of funds.

Immediately after receiving a payment in lieu of taxes, the county auditor shall apportion and pay it to the several political subdivisions in accordance with the agreement under which the payment was received, notwithstanding any other law controlling the expenditure of county funds.

SOURCES: Codes, 1942, § 9858; Laws, 1940, ch. 293.

§ 27-37-11. Requests for payments by subdivisions.

If the United States declines to deal with a county with respect to any political subdivision whose jurisdictional limits are within or coextensive with the limits of the county, or in the event the jurisdictional limits of a political subdivision lie within more than one county, that political subdivision is authorized to make requests of the United States for such payments in lieu of taxes as the United States may agree to pay. Provided, in the case of a consolidated or a rural separate school district located in more than one county, the governing body of the county shall make agreements for payments in lieu of taxes in their respective counties. Such political subdivisions as are referred to in this section (other than school districts located in more than one county) are hereby empowered to enter into agreements with the United States for the performance by the political subdivision of services for the benefit of a project, and for the payment by the United States to the political subdivision, in one or more installments, of sums in lieu of taxes.

SOURCES: Codes, 1942, § 9859; Laws, 1940, ch. 293.

§ 27-37-13. Deposit of funds.

All money received by a political subdivision pursuant to Section 27-37-9 or 27-37-11 shall be deposited in such fund or funds as may be designated in the agreement; provided, however, that if the agreement does not make such designation, the money shall be deposited in such fund or funds as the governing body of such political subdivision shall direct by appropriate resolution.

SOURCES: Codes, 1942, § 9860; Laws, 1940, ch. 293.

Cross References — Depositories for funds of local governments, see § 27-105-301 et seq.

§ 27-37-15. Basis of payments.

The amount of any payment of sums in lieu of taxes may be based on the estimated cost to each political subdivision, for and on whose behalf an agreement is entered into, of performing services for the benefit of a project during the period of the agreement, after taking into consideration the benefits to be derived by the political subdivision from such project, but shall not be in excess of the taxes which would result to the political subdivision for said period if the real property of the project within the political subdivision were taxable.

SOURCES: Codes, 1942, § 9861; Laws, 1940, ch. 293.

§ 27-37-17. Duties of subdivisions regarding provision of services.

No provision of this article shall be construed to relieve any political subdivision of the state, in the absence of an agreement for payment of sums in lieu of taxes by the United States, as provided in this article, of the duty of furnishing for the benefit of a project all services which the political subdivision usually furnishes to property in, and to persons residing within, a political subdivision without a payment of sums in lieu of taxes; provided if sums in lieu of taxes are not paid within one (1) year after due, such services may be discontinued.

SOURCES: Codes, 1942, § 9862; Laws, 1940, ch. 293.

§ 27-37-19. Tax commission to prepare roll of federal lands.

It shall be the duty of the state tax commission to obtain annually, or as often as may be necessary or expedient, from the farm security administration or from any agency vested with power to act, a correct legal description of all lands acquired or owned by the United States for any project and, when verified and corrected, to enter the same upon a suitable roll or schedule, listing the said lands in the order in which lands are entered upon the regular land assessment rolls. A separate roll or schedule shall be prepared annually for each county, and it shall be made up in such manner as to show the lands in each political subdivision.

SOURCES: Codes, 1942, § 9863; Laws, 1940, ch. 293.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Department of Revenue, see § 27-3-1 et seq.

Making up of roll, see § 27-37-23.

§ 27-37-21. Duty of assessor; valuation of lands.

It shall be the duty of each county assessor and of each chancery clerk to furnish the state tax commission with all information with respect to such lands for a project, showing the legal description, and the estimated value of the land and all elements thereof. The tax commission may, through its own employees and agents, verify all lists of lands furnished by the farm security administration, or other United States agency, county assessors and chancery clerks.

The tax commission is authorized to determine by agreement with the farm security administration, or other authorized United States agency, the value of the said lands (real estate) reasonably equal and uniform with the value of other like lands in the respective counties; and such value shall be considered in determining the sum to be paid by the United States in lieu of taxes to the state, and political subdivisions. If the farm security administration fails to agree to a value, the tax commission shall determine the value.

SOURCES: Codes, 1942, § 9864; Laws, 1940, ch. 293.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-37-23. Roll; copies to counties; revision.

When the necessary information has been received and the same has been verified, the tax commission shall make up, annually, for each county, a roll or schedule as required by Section 27-37-21 and shall make two (2) true and correct copies thereof. The original shall be preserved by the tax commission, as a record, and one (1) of the said copies shall be certified to the chancery clerk of the county in which the lands listed therein are located, and the other to the tax assessor of said county, prior to the first Monday in July. The chancery clerk and assessor shall file the said rolls as a public record in their respective offices. The tax commission may, at any time, prepare and file supplemental or revised rolls, to correct errors, or to include additional lands acquired by the United States.

SOURCES: Codes, 1942, § 9865; Laws, 1940, ch. 293.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-37-25. Roll; comparison and entry on county roll.

Upon receipt by the assessor of the roll or schedule of land, he shall compare the same with the assessment roll of the county, and in land assessment years, shall enter upon the assessment roll of the county all lands listed upon said roll or schedule, in the appropriate place; that is, said lands shall be listed in the proper section, township and range, but without value, and he shall enter the number of acres in each tract in the column on said land roll provided for United States government lands, and show the owner as the United States. The copy filed with the chancery clerk shall be presented to the board of supervisors, and it shall be the duty of the said board to examine the assessment roll of the county and to verify the descriptions and entries on the said roll by the assessor and make any necessary correction thereon.

It shall be the duty of the chancery clerk to carefully verify all of said entries and descriptions and to make all extensions and correctly add the number of acres.

SOURCES: Codes, 1942, § 9866; Laws, 1940, ch. 293.

§ 27-37-27. Roll; years when land not assessed.

When the assessor and chancery clerk shall receive the roll or schedule of land from the state tax commission, as provided by Section 27-37-21 of this article, in the years in which land is not assessed, or after the completion of the roll in land assessment years, they shall present the same to the board of supervisors, and the board shall carefully compare it with the land assessment roll of the county. It shall be the duty of the board of supervisors of each county in which any of such lands are located, to require the assessor to prepare proper petitions for the cancellation or change of assessments as provided by Section 27-35-143, Mississippi Code of 1972, and the board shall proceed to adopt proper orders as required by Section 27-35-149, Mississippi Code of 1972, so as to cancel all assessments against land owned by the United States for the purposes set forth in this article, and to assess to the proper owners any lands which are taxable to individual owners. All such petitions prepared by the assessor shall be acted upon by the board, proper orders adopted, as herein provided, and the same submitted to the tax commission for its approval or disapproval, to the end that all lands which are exempt from assessment shall be so shown on the roll, and all parties properly assessed with the lands owned, and the tax collector credited with any assessments with which he may be charged, and which are cancelled or reduced.

SOURCES: Codes, 1942, § 9867; Laws, 1940, ch. 293.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-37-29. Tax commission to request payment; other powers.

The state tax commission is hereby directed and authorized to request for and on behalf of the State of Mississippi the payment by the United States of any sums in lieu of taxes as authorized and contemplated by Section 2, Public Law 845, 74th Congress, approved June 29, 1936, (Paragraph 432, Title 40, U. S. C. S). The state tax commission is further authorized and empowered to enter into negotiations and consummate an agreement, or any renewal or alteration thereof, for and on behalf of the State of Mississippi for payment by the United States of any sums in lieu of taxes, authorized by said law. The authority hereby vested in the state tax commission is continuous and may be exercised annually, or at such times as may be deemed necessary or expedient.

SOURCES: Codes, 1942, § 9868; Laws, 1940, ch. 293.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-37-31. Agreements to be filed with treasurer; credit of funds.

The state tax commission, shall, upon the consummation of the agreement, or agreements authorized by this article, or any renewal or alteration thereof, file with the state treasurer an itemized statement of the amounts due to the state.

Upon receipt of the said sum by the treasurer, the part determined by the state tax commission to be due the State of Mississippi shall be credited to the general fund as a part of the general revenues of the state.

SOURCES: Codes, 1942, § 9869; Laws, 1940, ch. 293.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

ARTICLE 3.

TENNESSEE VALLEY AUTHORITY.

SEC.
27-37-301. Payments by Authority in lieu of taxes; apportionment.
27-37-303. Distribution of state receipts.
27-37-305. Receipt of funds for counties.
27-37-307. Distribution of receipts of counties and municipalities; characterization of receipts for purposes of growth limitations on ad valorem taxes.

§ 27-37-301. Payments by Authority in lieu of taxes; apportionment.

(1) Except as otherwise provided in subsection (4) of this section, the payments received and to be received by the State of Mississippi and counties therein from the Tennessee Valley Authority in lieu of taxes under Section 13 of the Tennessee Valley Authority Act of 1933, as amended, for the fiscal year ended June 30, 1957, and each fiscal year thereafter shall be shared and apportioned among the State of Mississippi and the counties and municipalities of Mississippi in which the Tennessee Valley Authority owns or operates power property on the following basis:

(a) From payments made for each such fiscal year by the Authority directly to the State of Mississippi, the state shall retain for the benefit of its General Fund an amount equal either to twelve and two-tenths percent (12-2/10%) of the total combined payments for such fiscal year by the Authority to the state and to counties therein, or to the former annual ad valorem property taxes levied by the state on power property (including reservoir land allocated to power purposes) purchased and operated by the Tennessee Valley Authority based upon the average of two (2) years of such taxes next prior to purchase as determined by the Tennessee Valley Authority under the provisions of Section 13 of the Tennessee Valley Authority Act, as amended, whichever is greater.

(b) After transfer to the State General Fund of the amount specified in subsection (a) hereof, the remainder of the payments made for each such fiscal year by the Authority directly to the State of Mississippi shall be distributed among counties and municipalities in which the Authority had power property (including reservoir land allocated to power purposes) at the end of the preceding fiscal year in such manner that the sum of such remainder plus the total of payments for the same fiscal year by the Authority directly to counties of the state shall be apportioned among said counties and municipalities by the same ratio that the book value of the Authority's power property in each county and in each municipality, respectively, bore as of the end of such preceding fiscal year to the total of the book value of the Authority's power properties in all counties within the state (including properties in municipalities within such counties) plus the book value of the Authority's power properties located in all municipalities within the state. The apportionment above provided for, however, shall be subject to the following qualifications, and the payment distribution thereunder shall be subject to such adjustment as may be necessary to meet the conditions set out in the paragraphs below:

(i) Notwithstanding any other provisions of this article all payments in lieu of taxes by the Tennessee Valley Authority directly to any county for any fiscal year shall be retained by such county. Such direct payments shall be deducted from the amount finally apportioned to such county under this subsection (b) before distribution of the balance, if any, of such county's payment share for the particular fiscal year from the state government.

(ii) With respect to any particular fiscal year, no municipality of the state shall receive less than the former annual ad valorem property taxes levied by such municipality on power property purchased and operated by the Tennessee Valley Authority, based upon the average of two (2) years of such taxes next prior to purchase as determined by the Tennessee Valley Authority under the provisions of Section 13 of the Tennessee Valley Authority Act, as amended.

(iii) If the initially apportioned payment share of any county or municipality is less than the minimum tax replacement amount to which such county or municipality may be entitled under paragraphs (i) and (ii) above, then the amount due to such county or municipality shall be increased to conform with such requirements, and the previously apportioned shares of all other counties and municipalities shall be reduced pro rata so that the total of such reductions shall equal the total of increases necessary to meet the minimum payment requirements of this paragraph.

(2) From and after May 25, 1976, the funds from the Authority authorized for deposit in the General Fund, as provided by subsection (1)(a) of this section, shall be deposited directly into the Tennessee-Tombigbee Waterway Bridge Bond Retirement Fund created by Section 65-26-9. Except as otherwise provided in subsection (4) of this section, when an amount equal to twenty-five percent (25%) of the total costs as to the principal of and the interest on the bonds issued under the authority of subsection (1) of Section 65-26-15 shall have been paid, such funds shall again be deposited into the State General Fund and the provisions of subsection (3)(a) of Section 65-26-19 which pledged such funds from the Authority for payment of the bonds shall stand repealed.

(3) From and after May 25, 1976, any increase in funds from the Authority, authorized for distribution to the Counties of Alcorn, Chickasaw, Clay, Itawamba, Kemper, Lee, Lowndes, Monroe, Noxubee, Pontotoc, Prentiss and Tishomingo by Chapter 26 of Title 65 over the amount received in 1975, shall be deposited directly into the Tennessee-Tombigbee Waterway Bridge Bond Retirement Fund created by Section 65-26-9 until terminated by the provisions of Chapter 26 of Title 65.

(4)(a) When the principal of, redemption premium, if any, and interest on the general obligation bonds issued under Section 65-26-15 have been paid in full, the payments to be received thereafter by the State of Mississippi and counties therein from the Tennessee Valley Authority in lieu of taxes under

Section 13 of the Tennessee Valley Authority Act of 1933, as amended, for each fiscal year shall be apportioned and paid as follows:

(i) Ten percent (10%) of such payments shall be paid into the State General Fund.

(ii) Twelve and one-half percent (12-½%) of such payments shall be paid to Tishomingo County.

(iii) Seventy-seven and one-half percent (77-½%) of such payments shall be paid to the counties and municipalities in the state within the service area of the Tennessee Valley Authority in the proportion that the amount of sales of power service to retail consumers by the Tennessee Valley Authority, or any facility distributing such power, for the next preceding fiscal year in each county, excluding municipalities therein, and in each municipality, bears to the total sales of such power service for said fiscal year to retail consumers statewide.

(iv) Notwithstanding any provision of this subsection (4) to the contrary, from the amount determined to be distributed to each county, including municipalities therein, under this subsection, the State Tax Commission shall withhold twenty-five percent (25%) of such allocation and distribute same to all school districts within the county in the proportion that the number of teacher units allotted to each school district within the county bears to the total teacher units allotted to all school districts within the county.

(v) Notwithstanding any provision of this subsection (4) to the contrary, the amount which would otherwise be allocated to the Town of Burnsville by the distribution in fiscal year 1987 and each fiscal year thereafter shall be increased to the amount it actually received from the distribution in fiscal year 1985 by payment out of the amount which would otherwise be distributed to the County of Tishomingo.

(b)(i) For the first fiscal year only in which distribution of Tennessee Valley Authority in lieu tax payments is made pursuant to this subsection (4), One Million Dollars ($1,000,000.00) shall be paid into the appropriate fund for expenditure by the Yellow Creek State Inland Port Authority, subject to the approval of the Mississippi Board of Economic Development, for capital improvements and economic development.

(ii) An additional distribution of Tennessee Valley Authority in lieu tax payments pursuant to this subsection (4) shall be made to Union County and Benton County for the following fiscal years in the manner hereinafter provided:

A. For fiscal year 1987, a payment equal to eighty percent (80%) of the difference between the amount paid to the county and municipalities therein on or about October 17, 1986, and the amount which the county and municipalities therein would otherwise be entitled to receive based on a pro rata calculation of sales of power service to retail consumers within the county, including municipalities therein.

From the amount determined to be allocated to each municipality under subsection (4)(a)(iii) within the two (2) respective counties, sixty percent (60%) thereof shall be paid to the county.

B. For fiscal year 1988, a payment equal to sixty percent (60%) of the difference between the amount paid to the county and municipalities therein on or about October 17, 1986, and the amount which the county and municipalities therein would otherwise be entitled to receive based on a pro rata calculation of sales of power service to retail consumers within the county, including municipalities therein.

From the amount determined to be allocated to each municipality under subsection (4)(a)(iii) within the two (2) respective counties, forty percent (40%) thereof shall be paid to the county.

C. For fiscal year 1989, a payment equal to forty percent (40%) of the difference between the amount paid to the county and municipalities therein on or about October 17, 1986, and the amount which the county and municipalities therein would otherwise be entitled to receive based on a pro rata calculation of sales of power service to retail consumers within the county, including municipalities therein.

From the amount determined to be allocated to each municipality under subsection (4)(a)(iii) within the two (2) respective counties, twenty percent (20%) thereof shall be paid to the county.

(iii) Monies remaining after the allocations in items (i) and (ii) of this paragraph (b) have been made shall then be distributed as provided in subsection (4)(a)(i), (ii) and (iii) above, without affecting the initial calculation of the apportionment to Union County and Benton County, including any municipalities therein.

(5) Distributions required by this section shall be made as soon as practicable following receipt by the state of Tennessee Valley Authority payments in lieu of taxes; however, distributions need not be made more frequently than monthly. The amounts held by the State Fiscal Management Board on April 20, 1987, shall be distributed as soon as practicable following April 20, 1987.

SOURCES: Codes, 1942, § 9870; Laws, 1958, ch. 581, § 1; Laws, 1976, ch. 492, § 20; Laws, 1980, ch. 442, § 10; Laws, 1986, ch. 506, § 1; Laws, 1987, ch. 518, § 1; Laws, 1994, ch. 418, § 2, eff from and after July 1, 1994.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Ascertainment of information necessary to determine the apportionment of funds under this section, see § 27-37-303.

Apportioning of money received by State Treasurer in accordance with this section, see § 27-37-303.

Distribution of payments received by boards of supervisors and municipal governing authorities from the state, see § 27-37-307.

Tennessee-Tombigbee Waterway bridges, see § 65-26-1 et seq.

Federal Aspects — Section 13 of the Tennessee Valley Authority Act of 1933, as amended, is classified at 16 USCS § 831*l*.

RESEARCH REFERENCES

CJS. 84 C.J.S., Taxation § 246.

§ 27-37-303. Distribution of state receipts.

At the end of each fiscal year, the State Tax Commission shall ascertain from the Tennessee Valley Authority to the extent it has the necessary data available, and from other sources, including electric power associations and other power distributors, to the extent it does not, the amount of power sales or kilowatt-hour sales to consumers in each county and municipality in this state by the Tennessee Valley Authority or any facility distributing such power and the book value of Tennessee Valley Authority power property in each Mississippi county and municipality in which the Tennessee Valley Authority holds such property, and the minimum amounts paid or payable by the Tennessee Valley Authority in replacement of former county and municipal ad valorem taxes on power properties purchased and operated by the Tennessee Valley Authority in Mississippi, if such information is necessary to determine the apportionment of funds under Section 27-37-301. Thereafter, as funds are received from the Tennessee Valley Authority, but not more frequently than monthly, the State Tax Commission shall apportion the amount received by the State Treasurer of Mississippi in accordance with Section 27-37-301 hereof, and shall issue his warrant therefor to the various counties and municipalities entitled thereto, and the same shall be paid by the State Treasurer from the funds received from the Tennessee Valley Authority. Said funds so received by the State Treasurer shall be deposited to a special fund until disbursements are made as herein authorized and directed, and that portion found to be due the State of Mississippi shall be transferred to the General Fund of the state as a part of the general revenues of the State of Mississippi.

SOURCES: Codes, 1942, § 9871; Laws, 1958, ch. 581, § 2; Laws, 1986, ch. 506, § 2; Laws, 1987, ch. 518, § 2; Laws, 1994, ch. 418, § 3, eff from and after July 1, 1994.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Distribution of payments received by boards of supervisors and municipal governing authorities from the state, see § 27-37-307.

§ 27-37-305. Receipt of funds for counties.

In those counties in which the power operations of the Tennessee Valley Authority are carried on and in which the Tennessee Valley Authority had acquired properties previously subject to state and local taxation, the board of supervisors of such counties are hereby authorized to receive for and on behalf of the county and county taxing units or districts any payments made by

Tennessee Valley Authority in lieu of taxation under the provisions of Section 13 of the Tennessee Valley Authority Act of 1933 and amendments thereto, if any; and the said board of supervisors of the respective counties affected hereby are hereby authorized to receive for and on behalf of the county, sums apportioned under provisions of Sections 27-37-301 and 27-37-303 hereof.

SOURCES: Codes, 1942, § 9872; Laws, 1958, ch. 581, § 3.

Federal Aspects — Section 13 of the Tennessee Valley Authority Act of 1933, as amended, is classified at 16 USCS § 831*l*.

§ 27-37-307. Distribution of receipts of counties and municipalities; characterization of receipts for purposes of growth limitations on ad valorem taxes.

The payments received by the board of supervisors direct from Tennessee Valley Authority shall be deposited to a special fund and the said board of supervisors shall ascertain at the end of each fiscal year what portion of said payments received by it during the preceding twelve (12) months is due or should be credited to the various taxing funds, districts or units of the county; and, when so ascertained, the said board of supervisors shall cause transfer of such sums from the special funds to the general funds of such taxing districts or units of the county, to be expended or applied as the governing authority of each such taxing unit might determine by proper order, for current operating expenses or to the payment of bonds and interest.

The said payments received by the board of supervisors and the municipal governing authorities from the state, under the provisions of subsection (1) or (4) of Section 27-37-301 and Section 27-37-303 hereof, shall be paid by the said board of supervisors and governing authorities into their respective general funds.

The board of supervisors of any county and the governing authorities of any municipality are hereby authorized and empowered to distribute out of their general funds to school districts of the county or municipality, as the case may be, all or any portion of amounts received by them as Tennessee Valley Authority payments in lieu of taxes.

Payments received pursuant to this article by the counties, school districts and municipalities shall not be included or considered as proceeds of ad valorem taxes for the purpose of the statutory growth limitations on ad valorem taxes.

SOURCES: Codes, 1942, § 9873; Laws, 1958, ch. 581, § 4; Laws, 1959 Ex. ch. 16; Laws, 1986, ch. 506, § 3; Laws, 1987, ch. 518, § 3, eff from and after passage (approved April 20, 1987).

ATTORNEY GENERAL OPINIONS

Payments received from the Tennessee Valley Authority by a board of supervisors may, after being deposited into the county general fund, be spent as the board deems proper in accordance with statutes governing county funds. Ouinn, May 13, 1992, A.G. Op. #92-0349.

CHAPTER 38

Ad Valorem Taxes—Telecommunications Tax Reform

Sec.
27-38-1. Short title.
27-38-3. Legislative findings; purpose.
27-38-5. Certain providers of telecommunication services entitled to refund of ad valorem tax; when refund payments due; refund payments to be made from Telecommunications Ad Valorem Tax Reduction Fund; proportionate reduction of refunds in the event of insufficient monies in Fund; unpaid refunds to carry forward to succeeding taxable years; excess amounts in Fund to be transferred to Motor Vehicle Ad Valorem Tax Reduction Fund.
27-38-7. Telecommunications Ad Valorem Tax Reduction Fund established; Fund administered by State Tax Commission.
27-38-9. Rate reduction required of providers that experience tax savings.

§ 27-38-1. Short title.

This chapter may be cited as the "Mississippi Telecommunications Tax Reform Act."

SOURCES: Laws, 2000, ch. 303, § 1, eff from and after July 1, 2000.

Editor's Note — Laws of 2000, ch. 303, § 11, provides:

"SECTION 11. If any material provision of this act is declared to be void, or if for any reason is declared to be invalid or of no effect, the remaining provisions of this act shall be void and of no effect."

Laws of 2000, ch. 303, § 12, provides:

"SECTION 12. Section 6 of this act shall be effective with respect to taxable services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2000, regardless of when such services are provided. Section 9 of this act shall take effect and be in force from and after January 1, 2001. The remaining provisions of this act shall take effect and be in force from and after July 1, 2000."

Cross References — Appeals from orders of Board of Tax Appeals, see § 27-35-163.

Assessment of public service corporations, see § 27-35-301 et seq.

Assessing and taxing property of telephone companies located in not more than six counties, see § 27-35-319.

Public service corporations liable for ad valorem taxes on certain buildings and land, see § 27-35-331.

Properties of public service corporations subject to ad valorem taxes, see § 27-35-333.

Properties of public service corporations not subject to ad valorem taxes, see § 27-35-335.

Sales taxes on public utilities, see § 27-65-19.

Distribution of sales taxes, contractor taxes, motor fuel taxes and other revenue collected under the Sales Tax chapter, see § 27-65-75.

§ 27-38-3. Legislative findings; purpose.

(1) The Legislature finds that one measure of the state's economic competitiveness is the presence of an efficient and affordable telecommunications infrastructure using the latest technological advancements.

(2) The Legislature further finds that the telecommunications industry is undergoing a dramatic change that is altering the identity of its participants, the nature of services that the industry provides, and the methods used to deliver those services.

(3) The Legislature finds that the telecommunications industry is becoming increasingly competitive and that full and fair competition within the telecommunications industry is beneficial to all Mississippians.

(4) The Legislature further finds that existing Mississippi ad valorem property tax laws place certain telephone companies at a competitive disadvantage because their property is classified for ad valorem tax purposes as "public utility property" and is assessed at the rate of thirty percent (30%) of such property's true value while many of their competitors' property is not classified as "public utility property" and is therefore assessed at the rate of fifteen percent (15%) of such property's true value.

(5) The Legislature finds that the competitive inequities engendered by such existing Mississippi property tax laws hinder the investment in the state's telecommunications infrastructure.

(6) The Legislature finds that the best method to mitigate the effects of such competitive disadvantage is to create a partial exemption for that particular species of property owned by telephone companies that is assessed at the higher rate. This partial exemption is most effectively implemented as an ad valorem tax refund from the State of Mississippi in an amount equal to the portion of the ad valorem taxes paid by such telephone companies that is attributable to the higher assessment rate.

(7) The Legislature further finds, however, that it is in the best interests of the State of Mississippi and its political subdivisions that the tax revenues available to the state should not be diminished by the tax refunds granted to such telephone companies; and that an expansion of the sales tax base to include interstate telecommunications services is expected to provide tax revenues to the state that are approximately equal to the amount of the tax refunds granted to such telephone companies.

(8) Furthermore, the Legislature finds that it is in the best interests of Mississippi consumers of telecommunications services that any tax savings experienced by such telephone companies be passed on to consumers in the form of reductions in the prices charged for the services provided by such telephone companies.

(9) Accordingly, the Legislature finds that there is a compelling public need to effect these changes in the tax system of the state in order to:

(a) Avoid placing certain telecommunications services providers at a competitive disadvantage;

(b) Provide purchasers of telecommunications services with greater choices and lower prices; and

(c) Preserve the revenue base of the existing property tax system for political subdivisions of the state.

SOURCES: Laws, 2000, ch. 303, § 2, eff from and after July 1, 2000.

Editor's Note — Laws of 2000, ch. 303, § 11, provides:

"SECTION 11. If any material provision of this act is declared to be void, or if for any reason is declared to be invalid or of no effect, the remaining provisions of this act shall be void and of no effect."

Laws of 2000, ch. 303, § 12, provides:

"SECTION 12. Section 6 of this act shall be effective with respect to taxable services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2000, regardless of when such services are provided. Section 9 of this act shall take effect and be in force from and after January 1, 2001. The remaining provisions of this act shall take effect and be in force from and after July 1, 2000."

§ 27-38-5. Certain providers of telecommunication services entitled to refund of ad valorem tax; when refund payments due; refund payments to be made from Telecommunications Ad Valorem Tax Reduction Fund; proportionate reduction of refunds in the event of insufficient monies in Fund; unpaid refunds to carry forward to succeeding taxable years; excess amounts in Fund to be transferred to Motor Vehicle Ad Valorem Tax Reduction Fund.

(1) With respect to ad valorem taxes becoming due after January 1, 2001, every person providing telecommunications services subject to sales tax under Section 27-65-19(1)(d), Mississippi Code of 1972, and which operates in more than six (6) counties, shall be entitled to a refund from the State of Mississippi in an amount equal to fifty percent (50%) of the aggregate amount of the ad valorem tax paid by such person on Class IV property, as defined in Section 112, Mississippi Constitution of 1890, to local taxing districts.

(2) On or before March 15, 2001, and on or before March 15 of each year thereafter, the Department of Revenue shall pay all refunds to which telecommunications service providers are entitled under the provisions of subsection (1) of this section for ad valorem taxes that became due on or before the first day of February immediately preceding March 15.

(3) The payments made pursuant to subsection (2) of this section shall be paid by the Department of Revenue exclusively out of the Telecommunications Ad Valorem Tax Reduction Fund created pursuant to Section 27-38-7. To the extent that the amount contained in such fund does not equal or exceed the payments prescribed by this section, such payments shall be proportionately reduced by the amount of the shortfall; provided, however, that any reduction shall be carried forward and paid to the respective telecommunications service provider in any succeeding taxable year or years in which monies remain in the fund after payment of all refunds pursuant to subsection (2) of this section for such year. The Department of Revenue shall determine the amount of any reductions pursuant to this subsection.

(4) On or before April 15, 2001, and on or before April 15 of each year thereafter, amounts in the Telecommunications Ad Valorem Tax Reduction Fund, which are in excess of the amounts necessary to pay all refunds pursuant to subsection (2) of this section and all amounts carried forward

pursuant to subsection (3) of this section shall be transferred into the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105.

SOURCES: Laws, 2000, ch. 303, § 3; Laws, 2013, ch. 537, § 4, eff from and after July 1, 2014.

Editor's Note — Laws of 2000, ch. 303, § 11, provides:

"SECTION 11. If any material provision of this act is declared to be void, or if for any reason is declared to be invalid or of no effect, the remaining provisions of this act shall be void and of no effect."

Laws of 2000, ch. 303, § 12, provides:

"SECTION 12. Section 6 of this act shall be effective with respect to taxable services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2000, regardless of when such services are provided. Section 9 of this act shall take effect and be in force from and after January 1, 2001. The remaining provisions of this act shall take effect and be in force from and after July 1, 2000."

Laws of 2013, ch. 537, § 6, as amended by Laws of 2014, ch. 530, § 41, effective July 1, 2014, provides:

"SECTION 6. (1) Except as otherwise provided in subsection (2) of this section, nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the sales tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the sales tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws.

"(2) The exemptions authorized in Section 1 of this act shall apply to all sales billed by the provider from and after July 1, 2014."

§ 27-38-7. Telecommunications Ad Valorem Tax Reduction Fund established; Fund administered by State Tax Commission.

(1) There is created in the State Treasury a special fund to be known as the Telecommunications Ad Valorem Tax Reduction Fund, into which shall be deposited the money specified in Section 27-65-75(15) and such other money as the Legislature may provide by appropriation. The money in the fund shall be used to make the payments provided for in Section 27-38-5.

(2) The Telecommunications Ad Valorem Tax Reduction Fund shall be administered by the State Tax Commission, and money in the fund shall be expended upon appropriation by the Legislature. Unexpended amounts remaining in the fund at the end of the state fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund. The State Tax Commission shall make the calculations necessary to make the distributions required pursuant to Section 27-38-5, and shall make the transfer of unexpended amounts required to be made pursuant to Section 27-38-5.

SOURCES: Laws, 2000, ch. 303, § 4, eff from and after July 1, 2000.

Editor's Note — Laws of 2000, ch. 303, § 11, provides:

"SECTION 11. If any material provision of this act is declared to be void, or if for any reason is declared to be invalid or of no effect, the remaining provisions of this act shall be void and of no effect."

Laws of 2000, ch. 303, § 12, provides:

"SECTION 12. Section 6 of this act shall be effective with respect to taxable services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2000, regardless of when such services are provided. Section 9 of this act shall take effect and be in force from and after January 1, 2001. The remaining provisions of this act shall take effect and be in force from and after July 1, 2000."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-38-9. Rate reduction required of providers that experience tax savings.

To the extent that a person providing telecommunications services that are regulated by the Mississippi Public Service Commission experiences a tax savings as a result of the provisions of this chapter, such savings shall inure to the benefit of the customers of such person in a manner to be determined by the Mississippi Public Service Commission. The Mississippi Public Service Commission shall issue a rate reduction order implementing the provisions of this section on or before December 31, 2000.

SOURCES: Laws, 2000, ch. 303, § 5, eff from and after July 1, 2000.

Editor's Note — Laws of 2000, ch. 303, § 11, provides:

"SECTION 11. If any material provision of this act is declared to be void, or if for any reason is declared to be invalid or of no effect, the remaining provisions of this act shall be void and of no effect."

Laws of 2000, ch. 303, § 12, provides:

"SECTION 12. Section 6 of this act shall be effective with respect to taxable services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2000, regardless of when such services are provided. Section 9 of this act shall take effect and be in force from and after January 1, 2001. The remaining provisions of this act shall take effect and be in force from and after July 1, 2000."

CHAPTER 39

Ad Valorem Taxes—State and Local Levies

Article 1. State levy 27-39-1
Article 2. Advertisement of Proposed Ad Valorem Tax Increases .. 27-39-201
Article 3. Local Levies 27-39-301

ARTICLE 1.

STATE LEVY.

SEC.
27-39-1 through 27-39-15. Repealed.
27-39-17. Transfer by board of supervisors of withheld taxes and matching levy from unauthorized to authorized purpose; approval.

§§ 27-39-1 through 27-39-15. Repealed.

Repealed by Laws, 1980, ch. 505, § 24 (as amended by Laws, 1981, 1st Ex Sess, ch. 5, § 1), eff September 30, 1982 (See Editor's Note below).

§ 27-39-1. [Codes, 1942, § 9877; Laws, 1942, ch. 117; Laws, 1958, ch. 570; Laws, 1974, ch. 508, § 2; Laws, 1975, ch. 457, § 12]

§ 27-39-3. [Codes, 1942, § 9877-01; Laws, 1964, ch. 276, § 1; Laws, 1973, ch. 448, § 1]

§ 27-39-5. [Codes, 1942, § 9877-02; Laws, 1964, ch. 276, § 2]

§ 27-39-7. [Codes, 1942, § 9877-03; Laws, 1964, ch. 276, § 3; Laws, 1966, ch. 625, § 1; Laws, 1968, ch. 434, § 1; Laws, 1973, ch. 448, § 2]

§ 27-39-9. [Codes, 1942, § 9877-04; Laws, 1964, ch. 276, § 4]

§ 27-39-11. [Codes, 1942, § 9877-05; Laws, 1964, ch. 276, § 5]

§ 27-39-13. [Codes, 1942, § 9877-06; Laws, 1964, ch. 276, § 6; Laws, 1968, ch. 361, § 41]

§ 27-39-15. [Codes, 1942, § 8936-71; Laws, 1962, ch. 271]

Editor's Note — Former § 27-39-1 provided for a state ad valorem tax levy.

Former § 27-39-3 related to the authority of counties to withhold portion of state ad valorem tax levy.

Former § 27-39-5 related to purposes for which withheld taxes could be expended.

Former § 27-39-7 provided for approval of purpose for levy of tax and for general and specific conditions and exclusions.

Former § 27-39-9 related to issuance of bonds.

Former § 27-39-11 related to restrictions upon use of revenues and effect of noncompliance.

Former § 27-39-13 related to termination of authority.

Former § 27-39-15 related to use of state tax to retire bonds issued for construction of manufacturing plant.

Laws of 1980, ch. 505, § 24, provided for the repeal of this section effective from and after January 1, 1982. Subsequently, Laws of 1981, 1st Ex Session, ch. 5, § 1, amended Laws of 1980, ch. 505, § 24, to extend the repeal date to September 30, 1982.

§ 27-39-17. Transfer by board of supervisors of withheld taxes and matching levy from unauthorized to authorized purpose; approval.

The board of supervisors of any county is hereby authorized and empowered, in its discretion, to transfer funds deposited from the withholding of state ad valorem taxes and the matching levy, including interest earned thereon, which were withheld for a purpose held by the supreme court of the State of Mississippi to be unauthorized, to a fund for a purpose authorized by law, subject to the approval of the state fiscal management board.

SOURCES: Laws, 1981, 1st Ex Sess, ch. 4; Laws, 1984, ch. 488, § 177, eff from and after July 1, 1984.

Editor's Note — Laws of 1984, ch. 488, § 341, provides as follows:

"SECTION 341. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action which accrued prior to the date on which the applicable sections of this act become effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which the applicable sections of this act become effective or shall thereafter be begun."

Section 27-104-1 provides that the term "Fiscal Management Board" shall mean the "Department of Finance and Administration".

Article 2.

Advertisement of Proposed Ad Valorem Tax Increases.

Sec.
27-39-201. Short title.
27-39-203. Public hearings to consider budget and tax levies; form and content of advertisement of hearings.
27-39-205. Repealed.
27-39-207. Advertisement of intention to increase ad valorem tax by school district; form and content of public notice; hearings.

§ 27-39-201. Short title.

This article shall be entitled the "Advertisement of Proposed Ad Valorem Tax Increases Act."

SOURCES: Laws, 1994, ch. 414, § 1, eff from and after July 1, 1994.

Editor's Note — Laws of 1994, ch. 414, § 11, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

§ 27-39-203. Public hearings to consider budget and tax levies; form and content of advertisement of hearings.

(1) The governing body of all taxing entities shall hold a public hearing at which time the budget and tax levies for the upcoming fiscal year will be considered.

(2)(a) Except as otherwise provided in this subsection, the public hearing shall be advertised in accordance with the following procedures. The advertisement shall be no less than one-fourth (¼) page in size and the type used shall be no smaller than eighteen (18) point and surrounded by a one-fourth-inch solid black border. The advertisement may not be placed in that portion of the newspaper where legal notices and classified advertisements appear. It is the intent of the Legislature that the advertisement appears in a newspaper that is published at least five (5) days a week, unless the only newspaper in the county is published less than five (5) days a week. It is further the intent of the Legislature that the newspaper selected be one of general interest and readership in the community, and not one of limited subject matter. The advertisement shall be run once each week for the two (2) weeks preceding the adoption of the final budget. The advertisement shall state that the taxing entity will meet on a certain day, time and place fixed in the advertisement, which shall be not less than seven (7) days after the day the first advertisement is published, for the purpose of hearing comments regarding the proposed budget and proposed tax levies. Any increase in the projected budget revenues or any increase in the millage rate over the current fiscal year shall be explained by the governing body giving the reasons for the proposed increase. A taxing entity collecting taxes in more than one (1) county shall make the required advertisement by publication in each county where the taxing entity collects taxes.

(b) If the proposed tax levies of a municipality are not in excess of the current fiscal year's certified tax rate and the municipality has a population of less than two thousand (2,000) according to the latest federal decennial census, the municipality may advertise the public hearing by posting notice of the public hearing in three (3) public places in the municipality.

(3) All hearings shall be open to the public. The governing body of the taxing entity shall permit all interested parties desiring to be heard an opportunity to present oral testimony within reasonable time limits.

(4) Each taxing entity shall notify the county or municipal governing body of the date, time and place of its public hearing. No taxing entity may schedule its hearing at the same time as another overlapping taxing entity in the same county, but all taxing entities in which the power to set tax levies is vested in the same governing authority may consolidate the required hearings into one (1) hearing. The county or municipal governing body shall resolve any conflicts in hearing dates and times after consultation with each affected taxing entity.

(5) If the proposed tax levies are not in excess of the current fiscal year's certified tax rate, the advertisement shall be in the following form:

"NOTICE OF A PUBLIC HEARING ON THE PROPOSED BUDGET AND PROPOSED TAX LEVIES FOR THE UPCOMING FISCAL YEAR FOR — (Name of the taxing entity)

The (name of the taxing entity) will hold a public hearing on its proposed budget and proposed tax levies for fiscal year (insert the year) on (date and time) at (meeting place).

The (name of the taxing entity) is now operating with projected total budget revenue of $________. (________ percent) or $____________ of such revenue is obtained through ad valorem taxes. For the next fiscal year, the proposed budget has total projected revenue of $____________. Of that amount, (________ percent) or $ ________, is proposed to be financed through a total ad valorem tax levy.

The decision to not increase the ad valorem tax millage rate for fiscal year (insert the year) above the current fiscal year's ad valorem tax millage rate means you will not pay more in ad valorem taxes on your home, automobile tag, utilities, business fixtures and equipment and rental real property, unless the assessed value of your property has increased for fiscal year (insert the year).

Any citizen of (name of the taxing entity) is invited to attend this public hearing on the proposed budget and tax levies for fiscal year (insert the year) and will be allowed to speak for a reasonable amount of time and offer tangible evidence before any vote is taken."

(6)(a) If the proposed tax levies for the upcoming fiscal year shall exceed the current fiscal year's certified tax rate, the advertisement shall be in the following form:

"NOTICE OF A TAX INCREASE AND A PUBLIC HEARING ON THE PROPOSED BUDGET AND PROPOSED TAX LEVIES FOR — (Name of the taxing entity)

The (name of the taxing entity) will hold a public hearing on a proposed ad valorem tax revenue increase for fiscal year (insert the year) and on its proposed budget and proposed tax levies for fiscal year (insert the year) on (date and time) at (meeting place).

The (name of the taxing entity) is now operating with projected total budget revenue of $________. (________ percent) or $____________ of such revenue is obtained through ad valorem taxes. For next fiscal year, the proposed budget has total projected revenue of $________. Of that amount, (________ percent) or $________ is proposed to be financed through a total ad valorem tax levy.

For next fiscal year, the (name of the taxing entity) plans to increase your ad valorem tax millage rate by ________ mills from ________ mills to ________ mills. This increase means that you will pay more in ad valorem taxes on your home, automobile tag, utilities, business fixtures and equipment and rental real property.

Any citizen of (name of the taxing entity) is invited to attend this public hearing on the proposed ad valorem tax increase, and will be allowed to speak for a reasonable amount of time and offer tangible evidence before any vote is taken."

(b) If an increase in the tax levy is necessary only because of an increased funding request made by a county district or any other cost which by law the county must fund and may not decrease in amount, then the notice required by this subsection shall be used and the county shall explain, in clear language in the notice, that the increase in the tax levy is necessary only because of the increased funding request of the county district or other cost incurred.

(7) During the fiscal year in which a county has completed a countywide reappraisal of the valuation of the property in the county that has been approved by the Department of Revenue and results in an increase in the assessed valuation of the property, the governing board of each taxing unit in the county, as defined in Section 27-33-11, shall include in the notice required to be published under this section the lower millage rate that would produce the same amount of revenue from ad valorem taxation on property of the taxing unit that was produced in the fiscal year before the property of the taxing unit was reappraised.

(8) After the hearing has been held in accordance with the above procedures, the governing body of the taxing entity may adopt a resolution levying a tax rate on classes of property designated by Section 112, Mississippi Constitution of 1890, as specified in its advertisement. If the resolution adopting the tax rate is not adopted on the day of the public hearing, the scheduled date, time and place for consideration and adoption of the resolution shall be announced at the public hearing and the governing body shall advertise the date, time and place of the proposed adoption of the resolution in the same manner as provided under subsection (2).

(9) Any governing body of a tax entity shall be prohibited from expending any funds for the applicable fiscal year until it has strictly complied with the advertisement and public hearing requirements set forth in this section.

SOURCES: Laws, 1994, ch. 414, § 2; Laws, 1995, ch. 481 § 1; Laws, 1999, ch. 499, § 1; Laws, 2012, ch. 352, § 1; Laws, 2014, ch. 449, § 1; Laws, 2015, ch. 394, § 1; Laws, 2017, ch. 362, § 1, eff from and after July 1, 2017.

Editor's Note — Laws of 1994, ch. 414, § 11, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2017 amendment substituted "less than two thousand (2,000)" for "less than one thousand five hundred (1,500)" in (2)(b).

ATTORNEY GENERAL OPINIONS

In the event a board of supervisors which operates under an October 1 through September 30 fiscal year does not propose to set its tax levy in excess of the certified tax rate as referred to in Section 27-39-205 [Repealed], and its only increase in revenue is due to an overall increased assessed valuation within the county, it must publish any type of notice of a tax increase, budget increase or budget hearing. Under Section 27-39-203 the exception of "revenue from new growth" does not include an increase in revenue due to overall increased assessed valuation. Webb, November 1, 1996, A.G. Op. #96-0626.

Section 27-39-203 requires counties to hold a public hearing at which the budget for the following fiscal year will be considered, regardless of whether or not the certified tax rate is being increased. Webb, November 1, 1996, A.G. Op. #96-0626.

Advertising of the initial tax levy of a municipality is not required pursuant to the statute since that section contemplates a tax increase, rather than a first tax levy. Meyer, June 19, 1998, A.G. Op. #98-0341.

§ 27-39-205. Repealed.

Repealed by Laws of 2012, ch. 352, § 4, effective July 1, 2012.

§ 27-39-205. [Laws, 1994, ch. 414, § 3; Laws, 1995, ch. 481, § 2; Laws, 1999, ch. 499, § 2, eff from and after passage (approved Apr. 14, 1999.)]

Editor's Note — Former § 27-39-205 provided the procedures prerequisite to increasing certain certified tax rates and the form and content of the requisite public notice. For present similar provisions, see § 27-39-203.

§ 27-39-207. Advertisement of intention to increase ad valorem tax by school district; form and content of public notice; hearings.

(1) Unless the increased revenue in a budget is derived solely from the expansion of a school district's ad valorem tax base, a school district shall not budget an increase in an ad valorem tax effort in dollars for support of the school district unless it first advertises its intention to do so at the same time that it advertises its intention to fix its budget for the next fiscal year.

(2) A request for an increase in ad valorem tax effort in dollars for the support of the school district pursuant to Sections 37-57-105 and 37-57-107 shall not be levied until an order has been approved by the school board of the school district in accordance with the following procedure:

(a) The school board of the school district shall advertise its intent to increase its ad valorem tax effort in dollars in a newspaper of general circulation in the county. The advertisement shall be no less than one-fourth (¼) page in size and the type used shall be no smaller than eighteen (18) point and surrounded by a one-fourth-inch solid black border. The advertisement shall not be placed in any portion of the newspaper where legal notices and classified advertisements appear. The advertisement shall appear in a newspaper that is published at least five (5) days a week, unless the only newspaper in the county is published less than five (5) days a week. The newspaper selected shall be one of general interest, readership and circulation in all areas of the community. The advertisement shall be published once each week for the two-week period preceding the adoption of the final budget. The advertisement shall provide that the school board of the school district will meet on a certain day, date, time and place fixed in the advertisement, which shall be no less than seven (7) days after the day the first advertisement is published. The meeting on the proposed increase may coincide with the hearing on the proposed budget of the school board of the school district.

(b) Except as provided for in subsection (1) of this section, if a school district is requesting an increase in ad valorem tax effort in dollars pursuant to Sections 37-57-105 and 37-57-107, it shall be in the following form:

"NOTICE OF PROPOSED AD VALOREM TAX EFFORT
(Name of the school district)

The (name of the school district) will hold a public hearing on its proposed school district budget for fiscal year (insert the year) on (date and time) at (meeting place). At this meeting, a proposed ad valorem tax effort will be considered.

The (name of the school district) is now operating with a projected total budget revenue of $________. Of that amount, ________ percent or $ ________ of such revenue is obtained through ad valorem taxes. For next fiscal year, the proposed budget has total projected revenue of $ ________. Of that amount, (________ percent) or $ ________ is proposed to be financed through a total ad valorem tax levy.

For the next fiscal year, the proposed increase in ad valorem tax effort by (name of the school district) may result in an increase in the ad valorem tax millage rate. Ad valorem taxes are paid on homes, automobile tags, business fixtures and equipment, and rental real property.

Any citizen of (name of the school district) is invited to attend this public hearing on the proposed ad valorem tax effort, and will be allowed to speak for a reasonable amount of time and offer tangible evidence before any vote is taken."

(3) The school board of the school district, after the hearing has been held in accordance with the above procedures, may adopt an order requesting the levying of an ad valorem tax effort in dollars in excess of the certified tax rate. If such order is not adopted on the day of the public hearing, the scheduled date, time and place for consideration and adoption of the order shall be announced at the public hearing.

(4) All hearings shall be open to the public. The school board of the school district shall permit all interested parties desiring to be heard an opportunity to present oral testimony within reasonable time limits and offer tangible evidence.

(5) Each school board of a school district shall notify the taxing entity of the date, time and place of its public hearing. No school board of a school district may schedule its hearing at the same time as another overlapping school district in the same county.

SOURCES: Laws, 1994, ch. 414, § 4; Laws, 1995, ch. 481, § 3; Laws, 1999, ch. 499, § 3; Laws, 2011, ch. 490, § 1, eff from and after passage (approved Apr. 6, 2011.)

Editor's Note — Laws of 1994, ch. 414, § 11, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

ATTORNEY GENERAL OPINIONS

This section does not require any advertisement in instances in which increased revenue in the school district's budget is derived solely from the expansion of the school district's ad valorem tax base. However, in instances in which increased revenue is derived from the reassessment or reappraisal of property values, then such advertisement would be required. Manning, July 30, 2004, A.G. Op. 04-0323.

Where the school board voted against requesting a tax increase at a hearing and, therefore, there was no announcement at the hearing of any additional consideration of the issue. Under these circumstances the school district must readvertise and hold another public hearing in accordance with this section. Patch, Aug. 13, 2004, A.G. Op. 04-0419.

Article 3.

Local Levies.

Sec.	
27-39-301.	Levy of tax.
27-39-303.	General county ad valorem tax levy; distribution of Tennessee Valley Authority in lieu payments.
27-39-304.	Repealed.
27-39-305.	Countywide levy for construction and maintenance of roads and bridges; limitation upon receipts from levy; disposition of excess funds; special ad valorem tax to cover shortfalls.
27-39-307.	Municipal general ad valorem tax levy.
27-39-309.	Debts; special improvements.
27-39-311.	Punishment of officer voting to impose tax in excess of limits.
27-39-313.	Repealed.
27-39-315.	School levy for maintenance may be separated from bond levy.
27-39-317.	County ad valorem taxes; time and manner of levy.
27-39-319.	Clerk to certify levy of county taxes.
27-39-320.	Amount of levy; limitations as to increases.
27-39-321.	Limitation on increases of property taxes; special ad valorem tax to cover shortfalls.
27-39-323.	Excess receipts; duty of chancery clerk.
27-39-325.	Authority of counties to levy on taxable property within county to defray cost of reappraisal.

27-39-327. Repealed.
27-39-329. County ad valorem tax levy for payment of bonds or notes and for other authorized purposes.
27-39-331. Funds for support of Mississippi Burn Care Fund.
27-39-332. Power and authority of county to levy tax to support Mississippi Burn Care Fund; power and authority of county to levy tax to support the construction and/or operation of Burn Center Lodge.
27-39-333. Issuance of promissory notes in event of ad valorem tax shortfall.

§ 27-39-301. Levy of tax.

No governing authority, having the power to impose or levy ad valorem taxes, shall, after the expiration of the fiscal year ending September 30, 1932, make any ad valorem tax levy or levies contrary to the provisions of this article.

SOURCES: Codes, 1942, § 9878; Laws, 1932, ch. 104; Laws, 1980, ch. 505, § 22; Laws, 1983, ch. 471, § 13, eff from and after July 1, 1983.

Cross References — Funding firemen's and policemen's disability and relief fund by taxation exceeding imposed limits, see § 21-29-117.

Authority of counties to levy additional ad valorem taxes for payment of bonds, notes or other obligations, notwithstanding limitations contained in this article, see § 27-39-329.

JUDICIAL DECISIONS

1. In general.

Chapter 104, Laws of 1932, limiting the power of counties to impose taxes, and chapter 235, Laws of 1932, restricting the power of counties and municipalities to borrow money and to levy taxes for the payment thereof, are part of the same legislative plan, without either of which that plan would be incomplete, and therefore must be construed together. Yazoo & Miss. V. Ry. v. Claiborne County, 191 Miss. 277, 2 So. 2d 548 (1941).

This statute [Code 1942, § 9878] does not repeal Code 1942, § 7352 (Code 1930 § 5701), providing for a levy of taxes for the support of paupers, since the latter statute provides for a tax for a special purpose. Board of Supvrs. v. Illinois Cent. R. Co., 186 Miss. 294, 190 So. 241 (1939).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 629 et seq.

CJS. 84 C.J.S., Taxation §§ 462-464, 520 et seq.

§ 27-39-303. General county ad valorem tax levy; distribution of Tennessee Valley Authority in lieu payments.

The board of supervisors of any county is hereby empowered to levy ad valorem taxes on taxable property in the respective counties in any one (1) year, as shown by the assessment roll containing assessments of property made as of January 1 of the year, and the assessment of motor vehicles as made according to the provisions of the Motor Vehicle Ad Valorem Tax Law of 1958 (Section 27-51-1 et seq.) for all general county purposes, exclusive only of levies for schools at the rate necessary to fund such purposes.

The board of supervisors of any county is further empowered to expend the proceeds of this levy for any purpose authorized for any other levy which the board of supervisors is authorized to make. The board of supervisors may authorize general fund expenditures for road and bridge construction; provided that the expenditures do not exceed thirty percent (30%) of the general fund in any one (1) fiscal year; provided that any general fund expenditures shall be subject to the requirements of Section 65-15-21, Mississippi Code of 1972; and the board may authorize general fund expenditures for school purposes when necessary to meet the minimum local ad valorem tax effort required by Section 37-57-1, Mississippi Code of 1972.

The board of supervisors of any county is further empowered to distribute from the county general fund a portion of the county's share of payments made by the Tennessee Valley Authority to the state in lieu of taxes (a) to the school districts of said county and (b) for construction on the roads and bridges of said county in an amount which bears the same proportion to the total amount of the county's share as the millage for the school fund and road and bridge fund bears to the total millage levied by the county. In the event said in lieu payments are expended for capital improvements, said payments shall not be subject to the increase limitations specified in Section 27-39-321 or 37-57-107, Mississippi Code of 1972.

SOURCES: Codes, 1942, § 9879; Laws, 1932, ch. 104; Laws, 1946, ch. 280, §§ 1, 2; Laws, 1958, ch. 549, § 7; Laws, 1962, ch. 263; Laws, 1964, ch. 522; Laws, 1964 1st Ex sess ch. 18; Laws, 1966, ch. 644, § 1; Laws, 1968, ch. 585, § 1; Laws, 1973, ch. 462, § 1; Laws, 1983, ch. 471, § 14; Laws, 1985, ch. 514, § 8; Laws, 1985, ch. 536, § 1; Laws, 1987, ch. 469; Laws, 2009 1st Ex Sess, ch. 1, § 1, eff from and after July 1, 2009.

Cross References — Tax powers of board of supervisors, see § 19-3-41.

Levy of municipal ad valorem taxes, see § 21-33-45.

Exempt new factories, see § 27-31-101.

Homestead exemptions, see § 27-33-1 et seq.

Reimbursement under the homestead exemption law, see § 27-33-41.

Countywide ad valorem levy for maintenance and/or construction of roads and bridges, see § 27-39-305.

When and how county taxes are levied, see § 27-39-317.

Motor vehicle ad valorem taxes, see § 27-51-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Tax anticipation note.

1. In general.

The 1946 act which provided for reimbursement of counties by the state for tax losses suffered because of homestead exemptions granted, could not amend the 1948 act which authorized the board of supervisors of Rankin County to expend certain moneys out of the general fund of the county to bring up to state highway specifications of roads which the state highway commission took over for maintenance, in view of a later 1948 act which required disbursement of funds, in accordance with a 1946 act. Board of Supvrs. v. Stone, 52 So. 2d 614 (Miss. 1951).

County tax levy "for food stamp plan and pauper maintenance," being ostensibly for the support of paupers, is for a special purpose and not governed by this section [Code 1942, § 9879] with regard to separately stating each levy as required in Code 1942, § 9889. Chickasaw County v. Gulf, M. & O.R. Co., 195 Miss. 754, 15 So. 2d 348 (1943).

Laws 1938, ch. 315 [now amended by Laws 1940, ch. 272, Code 1942 § 2996], authorizing a county to levy a tax not to exceed one mill for the treatment of the indigent sick and for the promotion of public health in the county, provided for a special tax which was not intended to be included in the general county taxes within the purview of this section [Code 1942, § 9879], and, therefore, the limitation imposed by the last proviso of this section [Code 1942, § 9879] did not apply to preclude a county having an assessed valuation in excess of $8,000,000, and a bonded indebtedness from levying such special tax. Yazoo & Miss. V. Ry. v. Bolivar County, 186 Miss. 824, 191 So. 426 (1939).

The words in the statute "for all general purposes" would exclude from the limitation, taxes for special purposes, and taxes not applicable to the county as a whole, that is, local or district taxes. Board of Supvrs. v. Illinois Cent. R. Co., 186 Miss. 294, 190 So. 241 (1939).

The limitation imposed by this section [Code 1942, § 9879] for general county purposes does not include a tax levied under Code 1942, § 7352 (Code 1930, § 5701), for the special purpose of caring for the poor, the aged, and unfortunate. Board of Supvrs. v. Illinois Cent. R. Co., 186 Miss. 294, 190 So. 241 (1939).

2. Tax anticipation note.

Board of supervisors did not exceed statutory limits in obtaining a tax anticipation note because it was not required to borrow only from estimated ad valorem taxes, and the borrowing in anticipation of tax statute was broad enough to allow counties to borrow against total anticipated ad valorem tax revenues from the preceding annual tax levy. Moreover, an in pari materia argument was unavailing in light of testimony that the numbers utilized by the board were based on the total ad valorem revenues in the general operating fund from the preceding annual tax levies. Russell v. Humphreys Cnty. Bd. of Supervisors (In re Validation of Tax Anticipation Note), 187 So. 3d 1025 (Miss. 2016).

ATTORNEY GENERAL OPINIONS

The board of supervisors could not levy an ad valorem tax in excess of the maximum allowed for general county purposes, for the purpose of repairing and maintaining the court house and jail. 1939-41, A.G. Op. p. 54.

Code 1942, § 9878 et seq. did not prohibit the board of supervisors of a county from levying a tax for the support of paupers in addition to the maximum amount fixed for general county purposes by said statute. 1939-41, A.G. Op. p. 54.

The board of supervisors could levy a one mill tax for public health, in addition to the maximum amount fixed for general county purposes. 1939-41, A.G. Op. p. 54.

Board of Supervisors for county was not required to place funds received from gross revenues of gaming licensees into county general fund thereby entitling county to use funds for purpose of maintaining and constructing county roads; however, this is subject to any private and local laws that may govern the distribution of these funds. Gex, Feb. 16, 1994, A.G. Op. #93-0810.

The County Board of Supervisors may pledge existing general funds collected pursuant to § 27-39-303 for the retirement of debt of the Community Hospital in that County upon a specific factual finding. Webb, October 5, 1995, A.G. Op. #95-0681.

The purchase of road equipment from monies in the county road fund is specifically authorized in Section 19-13-17 for counties operating either a unit or beat system of road administration. A county may not expend general fund monies for the purpose of maintaining or constructing county roads. Creekmore, April 26, 1996, A.G. Op. #96-0200.

A county may not expend general fund monies for the purpose of maintaining or constructing county or municipal roads. Overton, April 17, 1998, A.G. Op. #98-0190.

A county may not expend general fund monies for the purpose of maintaining or constructing county or municipal roads. Apr. 26, 2002, A.G. Op. #02-0216.

A county board of supervisors would not be authorized to make up the shortfall in a required tax levy out of the general county fund. Smith, Apr. 7, 2003, A.G. Op. 03-0109.

Equipment for maintaining or constructing county roads may not be bought from general funds. Shelton, Aug. 6, 2004, A.G. Op. 04-0339.

Beat employees with duties related to road and bridge construction and maintenance may not be paid from general funds of a county. All other beat employees may be paid from general funds of a county. (Clarifying Shelton, Aug. 6, 2004, A.G. Op. 04-0339). McLeod, Oct. 21, 2004, A.G. Op. 04-0472.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 629 et seq.

CJS. 84 C.J.S., Taxation §§ 462-464, 520 et seq.

§ 27-39-304. Repealed.

Repealed by Laws, 1983, ch. 471, § 27, eff from and after July 1, 1983.

[Codes, 1942, § 9879; Laws, 1932, ch. 104; Laws, 1946, ch. 2 80, §§ 1, 2; Laws, 1958, ch. 549, § 7; Laws, 1962, ch. 263; Laws, 1964, ch. 522; Laws, 1964, 1st Ex. sess. ch. 18; Laws, 1966, ch. 644, § 1; Laws, 1968, ch. 585, § 1; Laws, 1973, ch. 462, § 2]

Editor's Note — Laws of 1983, ch. 471, § 27, which repealed this section, was submitted to the United States Attorney General for preclearance under Section 5 of the Voting Rights Act of 1965. On May 31, 1994, the United States Attorney General interposed no objection to the repeal of this section by Laws, 1983, ch. 471, § 27, under Section 5 of the Voting Rights Act of 1965.

§ 27-39-305. Countywide levy for construction and maintenance of roads and bridges; limitation upon receipts from levy; disposition of excess funds; special ad valorem tax to cover shortfalls.

(1) In addition to the levy authorized by Section 27-39-303, the board of supervisors may annually impose a countywide ad valorem tax levy or levies for the maintenance and/or construction of roads and bridges.

(2) For each fiscal year, the aggregate receipts from taxes levied for the maintenance and/or construction of roads and bridges pursuant to this section shall not exceed the aggregate receipts from this source during any one (1) of the immediately preceding three (3) fiscal years, as determined by the board of supervisors, plus an increase not to exceed ten percent (10%). The additional revenue from the ad valorem tax on any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt, which were not assessed in the next preceding year may be excluded from the ten percent (10%) increase limitation set forth herein.

(3) The ten percent (10%) increase limitation prescribed in this section may be increased an additional amount only as provided in subsection (4) of this section or when the county board of supervisors has determined the need for additional revenues and has held an election on the question of raising the limitation prescribed in this section. The limitation may be increased under this subsection only if the proposed increase is approved by a majority of those voting in an election held for such purpose. The resolution, notice and manner of holding the election shall be as prescribed by law for the holding of elections for the issuance of bonds by the county board of supervisors. Revenues collected for the fiscal year in excess of the ten percent (10%) increase limitation pursuant to an election shall be included in the tax base for the purpose of determining aggregate receipts for which the ten percent (10%) increase limitation applies for subsequent fiscal years.

(4) As an alternative to the procedure provided in subsection (3) of this section, the ten percent (10%) increase limitation prescribed in this section may be increased by an additional amount without an election thereon if the aggregate receipts from the levy authorized in this section and from all other county levies to which Sections 27-39-320 and 27-39-321 apply do not exceed one hundred ten percent (110%) of the aggregate receipts from all such levies during any one (1) of the immediately preceding three (3) fiscal years, as determined by the board of supervisors.

(5) Except as otherwise provided for excess revenues generated pursuant to an election under subsection (3) of this section and for excess revenues generated in accordance with subsection (4) of this section, if revenues collected as the result of the taxes levied for the fiscal year pursuant to this section exceed the increase limitation, then it shall be the mandatory duty of the board of supervisors to deposit such excess receipts over and above the increase limitation into a special account and credit it to the county road and bridge fund. It will be the further duty of such board to hold said funds and invest the same as authorized by law. Such excess funds shall be calculated in the road and bridge budget for the succeeding fiscal year. Taxes imposed for the succeeding year shall be reduced by the amount of excess funds available. Under no circumstances shall such excess funds be expended during the fiscal year in which such excess funds are collected.

(6) In any county where there is located a nuclear generating power plant on which a tax is assessed under Section 27-35-309(3), the term “the aggregate receipts from taxes” as used in this section shall be the portion of the “base revenue” as defined in Section 27-39-320 which is used for the maintenance and/or construction of roads and bridges.

(7) If a shortfall occurs in revenues from sources other than ad valorem taxes and oil and gas severance taxes budgeted for the county road and bridge fund during the 1987 fiscal year, then the county may levy a special ad valorem tax for the 1988 fiscal year in an amount the avails of which shall not exceed such shortfall; provided, however, that the aggregate receipts from all ad valorem levies for the maintenance and/or construction of roads and bridges for the 1988 fiscal year shall not exceed the aggregate receipts from this source for

the immediately preceding fiscal year plus an increase not to exceed twenty percent (20%).

(8) If a shortfall occurs in revenues from oil and gas severance taxes budgeted for the county road and bridge fund during the 1987 fiscal year, then the county may levy a special ad valorem tax for the 1988 fiscal year in an amount the avails of which shall not exceed such shortfall. The avails of such special ad valorem tax shall not be included within the ten percent (10%) increase limitation. The ad valorem taxes levied to offset the shortfall shall be deemed to be ad valorem tax receipts produced in the 1988 fiscal year for the purpose of determining the limitation on receipts for the succeeding fiscal years.

SOURCES: Codes, 1942, § 9880; Laws, 1932, ch. 104; Laws, 1968, ch. 586; Laws, 1972, ch. 518, § 1; Laws, 1983, ch. 471, § 15; Laws, 1987, ch. 507, § 7; Laws, 1990, ch. 549, § 1; Laws, 1994, ch. 554, § 1, eff from and after July 1, 1994.

Cross References — Homestead exemptions, see § 27-33-1 et seq.

Characterization of revenues received by counties out of payments with respect to nuclear generating plants, for purposes of the growth limitation on ad valorem taxes, see § 27-35-309.

Inclusion of levy for roads and bridges in order of board of supervisors levying county taxes, see § 27-39-317.

Exclusion of taxes levied pursuant to this section from general limitation upon increases of property taxes, see § 27-39-321.

Inclusion, as proceeds of ad valorem taxes, of proceeds of promissory notes issued because of shortfall in ad valorem taxes, see § 27-39-333.

Additional tax on persons engaging in business of renting motor vehicles, see § 27-65-231.

Funds for county roads and bridges, see § 65-15-1 et seq.

JUDICIAL DECISIONS

1. In general.

Code 1942, § 8358, which provides that the board shall levy annually a tax, upon the taxable property of such county to be used for roads and other purposes and Code 1942, § 8360, which provides that the board of supervisors of any county may in its discretion, levy annually an ad valorem tax on all taxable property of the county to be used for constructing and maintaining all bridges and culverts on the public roads throughout the county, do not nullify this section [Code 1942, § 9880], which allows the board of supervisors to impose a county-wide levy or levies for the maintenance and/or construction of roads and bridges not to exceed seven mills in any one year and county-wide levies may therefore be made under Code 1942, § 9880. City of McComb v. Pike County, 212 Miss. 90, 54 So. 2d 171 (1951).

Under this section [Code 1942, § 9880] order of supervisors levying a bridge tax and a road tax under the above section was not a levy for the roads alone but the supervisors could make separate levies for roads and bridges and the city could collect only one half of the road fund and nothing of the bridge fund. City of McComb v. Pike County, 212 Miss. 90, 54 So. 2d 171 (1951).

A 1946 act which provided for reimbursement of counties by the state for tax losses suffered because of homestead exemptions granted, could not amend the 1948 act which authorized the board of supervisors of Rankin County to expend certain moneys out of the general fund of the county to bring up to state highway specifications roads which the state highway commission took over for maintenance, in view of a later 1948 act which required disbursement of funds, in accordance with a 1946 act. Board of Supvrs. v. Stone, 52 So. 2d 614 (Miss. 1951).

County was not liable to city under Code 1942, § 8367, providing that one-half of taxes collected for road purposes by county on property in a city working its own streets, shall be paid to such city, where county had neither levied nor collected any tax for such purpose, although bridge taxes were levied and collected, and allegedly spent by county for general road purposes. City of Crystal Springs v. Copiah County, 207 Miss. 257, 42 So. 2d 188 (1949).

A board of supervisors is authorized to levy a tax on the property of a supervisor's district only and not on the property of the entire county for the special purpose of paying outstanding loan warrants issued by such district, the collective tax becoming part of the district road fund. Yazoo & Miss. V. Ry. v. Harvey, 188 Miss. 665, 196 So. 512 (1940).

ATTORNEY GENERAL OPINIONS

If a board of supervisors makes findings that the placement of dumpsters at the county barn used to dispose of the waste generated at the barn by operations and also to dispose of litter and refuse collected from the county roads is necessary for the maintenance of the county roads, then such could be paid for from the county road fund. Meek, Jan. 13, 2006, A.G. Op. 05-0636.

§ 27-39-307. Municipal general ad valorem tax levy.

Municipalities may levy ad valorem taxes upon all taxable property within such municipality for general revenue purposes and for general improvements. Further, the governing authorities of any municipality may make additional levies for special purposes as authorized by law. Any such levy which is an increase from the previous fiscal year must be advertised in accordance with Sections 27-39-203 and 27-39-205. In addition to funding municipal general purposes, the municipal general ad valorem tax levy may be used to supplement any municipal ad valorem tax levy for a special purpose authorized by law, excluding levies for schools, without regard to any statutory millage limitation on such special purpose tax levy; however, nothing herein contained shall be construed to exempt such tax levies from the limitation on total receipts under Section 27-39-321.

SOURCES: Codes, 1942, § 9883; Laws, 1932, ch. 104; Laws, 1940, ch. 285; Laws, 1948, ch. 468, § 1; Laws, 1950, ch. 496, § 2; Laws, 1983, ch. 471, § 16; Laws, 1985, ch 536, § 2; Laws, 1994, ch. 414, § 7, eff from and after July 1, 1994.

Editor's Note — Laws of 1994, ch. 414, § 11, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Section 27-39-205, referred to in this section, was repealed by § 4 of Chapter 352, Laws of 2012. The former section provided the procedures prerequisite to increasing certain certified tax rates and the form and content of the requisite public notice. Present similar provisions are found in § 27-39-203.

Cross References — Levy of municipal ad valorem taxes, see § 21-33-45.

ATTORNEY GENERAL OPINIONS

A county board of supervisors is not authorized to modify or amend the millage for the fiscal year, once that has been duly and properly established by the governing authority. Hatcher, Dec. 28, 1999, A.G. Op. #99-0660.

§ 27-39-309. Debts; special improvements.

The limitations fixed by the foregoing sections shall not apply to any levy made for the payment of indebtedness with interest thereon, nor to special taxes for drainage, levees, sidewalks or street improvements, when such taxes are assessed against particular property.

Nothing herein contained shall be held to repeal any of the provisions of Chapter 96 of the Acts of the Extraordinary Session of 1931, but said Chapter 96 shall remain in full force and effect.

SOURCES: Codes, 1942, § 9886; Laws, 1932, ch. 104.

§ 27-39-311. Punishment of officer voting to impose tax in excess of limits.

[With regard to any county which is exempt from the provisions of Section 19-2-3, this section shall read as follows:]

Any member of a board of supervisors or aldermen or city commissioners who shall vote to impose a tax levy in excess of the limits as fixed by this article shall be deemed guilty of a misdemeanor and upon conviction shall be punished in the manner provided by law. It is not the intent or purpose of this article to repeal or abrogate the present law with reference to division of road maintenance funds as now in effect between road districts and municipalities located therein.

[With regard to any county which is required to operate on a countywide system of road administration as described in Section 19-2-3, this section shall read as follows:]

Any member of a board of supervisors or aldermen or city commissioners who shall vote to impose a tax levy in excess of the limits as fixed by this article shall be deemed guilty of a misdemeanor and upon conviction shall be punished in the manner provided by law.

SOURCES: Codes, 1942, § 9887; Laws, 1932, ch. 104; Laws, 1988 Ex Sess, ch. 14, § 20, eff from and after October 1, 1989.

Cross References — Imposition of standard State assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-39-313. Repealed.

Repealed by Laws, 1979, ch. 367, eff from and after March 15, 1979.
[Codes, 1942, § 9887.5; Laws, 1947, 1st Ex ch. 22, §§ 1, 2]

Editor's Note — Former § 27-39-313 related to tax levy for line consolidated school district lying in two counties.

§ 27-39-315. School levy for maintenance may be separated from bond levy.

Boards of supervisors and municipal governing authorities are hereby authorized and empowered in their discretion to divide into two funds the levies which these respective bodies are now authorized and empowered by law to levy for school purposes for other than interest on bonds and bond maturities. One of these funds shall include funds necessary for the current expenses and maintenance of schools, the other fund shall include those items excluded from the term "maintenance tax" as set forth in the homestead exemption law. The levy producing the second fund will not be entitled to reimbursement from homestead exemption appropriations.

SOURCES: Codes, 1942, § 9888; Laws, 1942, ch. 159.

§ 27-39-317. County ad valorem taxes; time and manner of levy.

The board of supervisors of each county shall, at its regular meeting in September of each year, levy the county ad valorem taxes for the fiscal year, and shall, by order, fix the tax rate, or levy, for the county, for the road districts, if any, and for the school districts, if any, and for any other taxing districts; and the rates, or levies, for the county and for any district shall be expressed in mills or a decimal fraction of a mill. Said tax rates, or levies, shall determine the ad valorem taxes to be collected upon each dollar of valuation, upon the assessment rolls of the county, including the assessment of motor vehicles as provided by the Motor Vehicle Ad Valorem Tax Law of 1958, Section 27-51-1 et seq., for county taxes; and upon each dollar of valuation for the respective districts, as shown upon the assessment rolls of the county, including the assessment of motor vehicles as provided by the Motor Vehicle Ad Valorem Tax Law of 1958, Section 27-51-1 et seq.; except as to such values as shall be exempt, in whole or in part, from certain tax rates or levies. If the rate or levy for the county is an increase from the previous fiscal year, then the proposed rate or levy shall be advertised in accordance with Section 27-39-203. If the board of supervisors of any county shall not levy the county taxes and the district taxes at its regular September meeting, the board shall levy the same on or before September 15 at an adjourned or special meeting, or thereafter, provided, however, that if such levy be not made on or before the fifteenth day of September then the tax collector or Department of Revenue may issue road and bridge privilege tax license plates for motor vehicles as defined in the Motor Vehicle Ad Valorem Tax Law of 1958, Section 27-51-1 et seq., without collecting or requiring proof of payment of county ad valorem taxes, and may continue to so issue such plates until such levy is duly certified to him, and for twenty-four (24) hours thereafter.

Notwithstanding the requirements of this section, in the event the Department of Revenue orders the county to make an adjustment to the tax roll pursuant to Section 27-35-113, the county shall have a period of thirty (30) days from the date of the commission's final determination to adjust the millage in order to collect the same dollar amount of taxes as originally levied by the board.

In making the levy of taxes, the board of supervisors shall specify, in its order, the levy for each purpose, as follows:

(a) For general county purposes (current expense and maintenance taxes), as authorized by Section 27-39-303.

(b) For roads and bridges, as authorized by Section 27-39-305.

(c) For schools, including the countywide minimum education program levy and the levy for each school district including special municipal separate school districts, but not including other municipal separate school districts, and for an agricultural high school, county high school or junior college (current expense and maintenance taxes), as authorized by Chapter 57, Title 37, Mississippi Code of 1972, and any other applicable statute. The levy for schools shall apply to the assessed value of property in the respective school districts, including special municipal separate school districts, but not including other municipal separate school districts, and a distinct and separate levy shall be made for each school district, and the purpose for each levy shall be stated.

(d) For road bonds and the interest thereon, separately for countywide bonds and for the bonds of each road district.

(e) For school bonds and the interest thereon, separately for countywide bonds and for the bonds of each school district.

(f) For countywide bonds, and the interest thereon, other than for road bonds and school bonds.

(g) For loans, notes or any other obligation, and the interest thereon, if permitted by the law.

(h) For any other purpose for which a levy is lawfully made.

The order shall state all of the purposes for which the general county levy is made, using the administrative items suggested by the State Department of Audit of Mississippi under the county budget law in its uniform system of accounts for counties, but the rate or levy for any item or purpose need not be shown; and if a countywide levy is made for any general or special purpose under the provisions of any law other than Section 27-39-303, each such levy shall be separately stated.

During the month of February of each year, if the order or resolution of the board of trustees of any school district of said county or partly in said county, is filed with it requesting the levying of ad valorem taxes for the support and maintenance of such school district for the following fiscal year, then the board of supervisors of every such county in the state shall notify, in writing, within thirty (30) days, the county superintendent of education of such county, the levy or levies it intends to make for the support and maintenance of such school districts of such county at its regular meeting in September following, and the county superintendent of education and the trustees of all such school districts shall be authorized to use such expressed intention of the board of supervisors in computing the support and maintenance budget or budgets of such school district or districts for the ensuing fiscal school year.

SOURCES: Codes, 1857, ch. 59, arts. 24, 25; 1871, §§ 1372, 1373; 1880 §§ 2153, 2154; 1892, § 314; 1906, § 335; Hemingway's 1917, § 3708; 1930, § 3227; 1942, § 9889; Laws, 1920, ch. 253; Laws, 1938, Ex. ch. 28; Laws, 1940, ch. 251; Laws, 1956, ch. 296, § 18; Laws, 1958, ch. 549, § 8; Laws, 1962, ch. 270; Laws, 1978, ch. 354, § ; Laws, 1983, ch. 471, § 17; Laws, 1990, ch. 498, § 6; Laws, 1994, ch. 414, § 8; Laws, 2012, ch. 352, § 3, eff from and after July 1, 2012.

Editor's Note — Laws of 1990, ch. 498, § 8, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1994, ch. 414, § 11, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Tax powers of board of supervisors, see § 19-3-41.

Levy of municipal ad valorem taxes, see § 21-33-45.

Re-establishment of lost or destroyed tax levy records, see § 25-55-17.

General county ad valorem tax levy, see § 27-39-303.

Motor vehicle ad valorem taxes, see § 27-51-1 et seq.

Drainage district tax levy, see §§ 51-31-63, 51-31-65.

JUDICIAL DECISIONS

1. Construction and application, generally.
2. Time for tax levy.
3. Orders for tax levy.

1. Construction and application, generally.

Board of supervisors did not exceed statutory limits in obtaining a tax anticipation note because it was not required to borrow only from estimated ad valorem taxes, and the borrowing in anticipation of tax statute was broad enough to allow counties to borrow against total anticipated ad valorem tax revenues from the preceding annual tax levy. Moreover, an in pari materia argument was unavailing in light of testimony that the numbers utilized by the board were based on the total ad valorem revenues in the general operating fund from the preceding annual tax levies. Russell v. Humphreys Cnty. Bd. of Supervisors (In re Validation of Tax Anticipation Note), 187 So. 3d 1025 (Miss. 2016).

There is no authorization hereunder for the levy of a special and new tax for "food stamp plan and pauper maintenance" in cooperation with the Federal Surplus Commodities Corporation of the United States Department of Agriculture. Chickasaw County v. Gulf, M. & O.R. Co., 195 Miss. 754, 15 So. 2d 348 (1943).

Laws of 1938, ch. 315 [now amended by Laws of 1940, ch. 272, Code 1942, § 2996], authorizing a county to levy tax not to exceed one mill for the treatment of the indigent sick and for the promotion of public health in the county, provided for a special tax which was not intended to be included in the general county taxes within the purview of Laws of 1932, ch. 104 (Code 1942, § 9879), and, therefore, the limitation imposed by the last proviso of Laws of 1932, ch. 104 (Code 1942, § 9879), to the effect that counties having an assessed valuation of less than $8,000,000 and having no bonded indebtedness should be allowed to levy one additional mill for the purpose of maintaining a full-time health unit, did not apply to such special tax. Yazoo & Miss. V. Ry. v. Bolivar County, 186 Miss. 824, 191 So. 426 (1939).

Where the board of supervisors by mistake or clerical error levies ten mills for general county tax it may at the next meeting correct such error, making the levy seven and one-fourth mills. Burke v. Leggett, 118 Miss. 660, 79 So. 843 (1918).

Where taxes for the county have been levied at the proper time and are subsequently illegally reduced by the board, the taxpayer whose land has been sold therefor cannot be heard to complain. McCready v. Lansdale, 58 Miss. 877 (1881); Havard v. Day, 62 Miss. 748 (1885).

But if the board meet at the proper time and levy county taxes, and at a subsequent special meeting levy other taxes, such additional levy will be void. Gamble v. Witty, 55 Miss. 26 (1877).

2. Time for tax levy.

The special meeting provided for under this section [Code 1942, § 9889] was not intended as a requirement that in such circumstances the levy should be made only at a special meeting, but as a provision for the speedy compliance with the duty of making the levy, and if, upon such failure, no special meeting should be called, it would be the duty of the board to make the levy at its next regular meeting. Beck v. Allen, 58 Miss. 143 (1880).

To subserve the object of this provision, the levy should be made at the first meeting, regular or special, after the omission to levy at the prescribed time. Beck v. Allen, 58 Miss. 143 (1880).

3. Orders for tax levy.

In a proceeding involving the validity of tax sales, testimony that some of the minutes of the board of supervisors pertaining to the assessment and sale, were not signed by the president until after the adjournment of the meeting, was incompetent, since oral proof is not admissible to contradict, alter, or change minutes regular upon their face. Entrekin v. Tide Water Associated Oil Co., 203 Miss. 767, 35 So. 2d 305 (1948).

Supervisors should make their orders for tax levy full, comprehensive and clear, and have them prepared with great care, so that the public business may be settled, and that illegal results and expense and annoyance to the people may be avoided. Barron v. Eason, 199 Miss. 739, 25 So. 2d 188 (1946).

Provision that tax levy ordered by supervisors shall be "upon each dollar of valuation" is a direction to the collector and not to the supervisors, and omission of direction to that effect from supervisors' order for tax levy did not make levy void so as to invalidate subsequent delinquent tax sale. Barron v. Eason, 199 Miss. 739, 25 So. 2d 188 (1946).

Orders for tax levy by board of supervisors, expressly connected as being for the same tax levy, when construed together as one order satisfied requirement that tax lien be expressed in mills or fractions thereof so as not to invalidate subsequent delinquent tax sale, notwithstanding that one of such orders merely set out the rate in figures without specifying that such figures represented mills or fractions thereof. Barron v. Eason, 199 Miss. 739, 25 So. 2d 188 (1946).

County levy of tax "for food stamp plan and pauper maintenance" failed to state separately what portion thereof was for the food stamp plan and what portion was for pauper maintenance, as required by this section [Code 1942, § 9889]. Chickasaw County v. Gulf, M. & O.R. Co., 195 Miss. 754, 15 So. 2d 348 (1943).

Where county undertook to levy tax "for food stamp plan and pauper maintenance," without separately stating what portion of the tax was for each item thereof, in violation of statute, and the tax exceeded tax anticipation loan notes executed by county, taxpayer paying tax under protest was entitled to recover such tax and also tax paid pursuant to levy "for food stamp loan warrants." Chickasaw County v. Gulf, M. & O.R. Co., 195 Miss. 754, 15 So. 2d 348 (1943).

The words "the order shall state the rate, or levy for each item making the total of the levy for the first purpose listed above," in the statute, are unequivocal and the requirements mandatory, and substantial compliance must be had therewith. Gulf & S.I.R.R. v. Harrison County, 192 Miss. 114, 4 So. 2d 717 (1941).

A county budget as to the ensuing year, which is an estimate of the expenses and may be revised under certain conditions, could not take the place of the positive statutory requirements as to the contents of the order making the levy. Gulf & S.I.R.R. v. Harrison County, 192 Miss. 114, 4 So. 2d 717 (1941).

A levy for general county purposes made by county supervisors in the words "General County Funds...5.000 upon each dollar of valuation of taxable property of Harrison County, for general expenses of the county," did not comply with the statutory requirements, which were mandatory, and therefore the levy was not legal. Gulf & S.I.R.R. v. Harrison County, 192 Miss. 114, 4 So. 2d 717 (1941).

An order of the board of supervisors directing an assessment is not final until the assessment roll is approved and the board adjourned. Madison County v. Frazier, 78 Miss. 880, 29 So. 765 (1901).

ATTORNEY GENERAL OPINIONS

A county could not pay from its sanitation fund, which was funded by a millage levy on county residents, the sum of $100,000.00 to a city to enlarge its animal control shelter so that it could continue to be used for animal control for both city and county animals, based on the fact that the millage levy was adopted for purposes of solid waste disposal, rather than animal control. Barry, Oct. 13, 2000, A.G. Op. #2000-0581.

§ 27-39-319. Clerk to certify levy of county taxes.

When the board of supervisors shall have made the levy of county taxes by resolution, the clerk of the board shall thereupon immediately certify the same to the State Auditor and tax collector of the county.

When a resolution levying ad valorem taxes has been adopted by the board of supervisors, the clerk of the board of supervisors shall certify immediately a copy of such resolution to the State Tax Commission. The clerk shall have the resolution of the board of supervisors printed within two (2) weeks after it is entered on the minutes of the board of supervisors, and he shall furnish any taxpayer upon request with a copy thereof. If a newspaper is published within such county, then such resolution shall be published in its entirety, at least one (1) time, within ten (10) days after its adoption. If no newspaper is published within such county, then a copy of such resolution, in its entirety, shall be posted by such clerk in at least three (3) public places in such county, within ten (10) days after its adoption.

The clerk shall be liable on his bond for any damages sustained by his failure to comply with the requirements of this section.

SOURCES: Codes, 1857, ch. 59, art. 24; 1871, § 1372; 1880, § 2153; 1892, § 315; 1906, § 336; Hemingway's 1917, § 3709; 1930, § 3228; 1942, § 9890; Laws, 1920, ch. 253; Laws, 1994, ch. 414, § 9, eff from and after July 1, 1994.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14, Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1994, ch. 414, § 11, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Certification of assessment rolls generally, see § 27-35-123.

Certification of railroad assessment rolls, see § 27-35-315.

Furnishing tax collector with copy of county tax levy under motor vehicle ad valorem tax law, see § 27-51-13.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 629-643.

CJS. 84 C.J.S., Taxation §§ 71, 462-699.

§ 27-39-320. Amount of levy; limitations as to increases.

(1) The Legislature finds and determines that legislation requiring a specific levy or requiring consent of some other governing body to reduce the levy was intended to raise a certain amount of revenue for specific purposes. Upon this determination and notwithstanding the provisions of any statute which requires a definite levy to be made or which requires that a levy may not be reduced except by the consent of some other governing authority, the amount of such levy shall be deemed to be an amount necessary to produce the revenues received in the next preceding year plus, at the option of the taxing authority, an increase not to exceed ten percent (10%) of such revenues.

(2) In any county where there is located a nuclear generating power plant on which a tax is assessed under Section 27-35-309(3), such required levy and revenue produced thereby may be reduced by the levying authority in an amount in proportion to a reduction in the base revenue of any such county from the previous year. Such reduction shall be allowed only if the reduction in base revenue equals or exceeds five percent (5%). "Base revenue" shall mean the revenue received by the county from the ad valorem tax levy plus the revenue received by the county from the tax assessed under Section 27-35-309(3) and authorized to be used for any purposes for which a county is authorized by law to levy an ad valorem tax. For purposes of determining if the reduction equals or exceeds five percent (5%), a levy of millage equal to the prior year's millage shall be hypothetically applied to the current year's ad valorem tax base to determine the amount of revenue to be generated from the ad valorem tax levy. For the purposes of this section, the portion of base revenue used to fund the purpose for which a specific levy is required shall be deemed to be the total receipts from ad valorem taxes for such purpose. This paragraph shall apply to taxes levied for the 1987 fiscal year and for each fiscal year thereafter. If the Mississippi Supreme Court or another court finally adjudicates that the tax levied under Section 27-35-309(3) is unconstitutional, then this paragraph shall stand repealed.

(3) With respect to ad valorem taxes levied on or after October 1, 1980, no county or municipality shall levy those mills heretofore required by law to be levied to an extent that such levy shall produce more than the total receipts produced from such levy in the next preceding year, plus, at the option of the taxing authority, an increase not to exceed ten percent (10%) of such receipts. Such total receipts shall be deemed to include the total avails of such levy either collected from the property owner or by reimbursement by the state. The revenues produced from any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt which were not assessed in the next preceding year may be excluded from the limitation set forth herein.

(4) The ten percent (10%) increase limitation prescribed in this section may be increased by an additional amount by the board of supervisors of any county if the aggregate receipts from all county levies to which this section and Sections 27-39-305 and 27-39-321 apply do not exceed one hundred ten percent

(110%) of the aggregate receipts from all such levies during any one (1) of the immediately preceding three (3) fiscal years, as determined by the board of supervisors.

(5) The limitations set forth in this section shall apply to the mandatory tax levied by Section 27-39-329.

SOURCES: Laws, 1980, ch. 505, § 14; Laws, 1987, ch. 507, § 8; Laws, 1987, ch. 520, § 1; Laws, 1990, ch. 549, § 2; Laws, 1994, ch. 414, § 10; Laws, 1994, ch. 554, § 2, eff from and after July 1, 1994 (approved April 1, 1994).

Editor's Note — Laws of 1987, ch. 520, § 3, effective from and after its passage (approved April 21, 1987) provides as follows:

"SECTION 3. This act shall apply to fiscal year 1987 levies and budgets and each fiscal year thereafter."

Laws of 1994, ch. 414, § 11, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Ad valorem tax for acquisition and maintenance of railroad properties, see § 19-29-18.

Applicability of this section to a countywide levy for the construction and maintenance of roads and bridges, see § 27-39-305.

Inapplicability of general limitation on increases of property taxes to mandatory levies enumerated in this section, see § 27-39-321.

Applicability of this section to limitation on increases in property taxes, see § 27-39-321.

Duty of chancery clerk with respect to excess receipts, see § 27-39-323.

Disposition of excess revenues collected from levies referred to in this section, see § 27-39-323.

Inclusion, as proceeds of ad valorem taxes, of proceeds of promissory notes issued because of shortfall in ad valorem taxes, see § 27-39-333.

Exclusion of tax receipts, used by junior colleges to repay loans, from growth limitations on ad valorem taxes, see § 37-29-103.

ATTORNEY GENERAL OPINIONS

The levy imposed by Section 21-37-43 is not exempt from the 10% limitation of either Section 27-39-320 or Section 27-39-321. Bordis, Jan. 31, 2003, A.G. Op. #03-0020.

The legislature intended to provide a certain amount of revenue to a port and did not intend that revenue to increase without limitation; i.e., a port may receive the support of tax levies by the county to the extent provided by Section 59-7-403 by means of Section 27-39-329, subject to the ten percent cap on increase in receipts over the previous year. Meadows, Mar. 14, 2003, A.G. Op. #03-0048.

Due to the fact that funds received in the lawsuit settlement or court verdict are not realized from the proceeds of the county's ad valorem tax levy, there is no requirement to reduce the following year's tax levy. Hemphill, Oct. 29, 2004, A.G. Op. #04-0498.

§ 27-39-321. Limitation on increases of property taxes; special ad valorem tax to cover shortfalls.

(1) With respect to ad valorem taxes levied for each fiscal year, no political subdivision may levy ad valorem taxes in any fiscal year which would render in total receipts from all levies an amount more than the receipts from that source during any one (1) of the immediately preceding three (3) fiscal years, as determined by the levying governing authority, plus, at the option of the taxing authority, an increase not to exceed ten percent (10%) of such receipts. The additional revenue from the ad valorem tax on any newly constructed properties or any existing properties added to the tax rolls or any properties previously exempt, which were not assessed in the next preceding year and cost incurred and paid in the next preceding year in connection with reappraisal may be excluded from the ten percent (10%) increase limitation set forth herein. Taxes levied for school district purposes under any statute and taxes levied for the maintenance and/or construction of roads and bridges under Section 27-39-305 shall be excluded from the ten percent (10%) increase limitation set forth herein. Taxes levied for payment of principal of and interest on general obligation bonds issued heretofore or hereafter shall be excluded from the ten percent (10%) increase limitation set forth herein. Any additional millage levied to fund any new program mandated by the Legislature shall be excluded from the limitation for the first year of the levy and included within such limitation in any year thereafter. The limitation imposed under this paragraph shall not apply to those mandatory levies enumerated in Sections 27-39-320 and 27-39-329.

(2) The limitation of this section may be increased only as provided in subsection (3) or (4) of this section or when the governing body of a political subdivision has determined the need for additional revenues, adopts a resolution declaring its intention so to do and has held an election on the question of raising the limitation prescribed in this section. The notice calling for an election shall state the purposes for which the additional revenues shall be used, the amount of the tax levy to be imposed for such purposes and period of time for which such tax levy shall be made; however, such tax levy shall not be made for more than five (5) successive years. The limitation may be increased under this subsection only if the proposed increase is approved by a majority of those voting. Subject to specific provisions of this paragraph to the contrary, the publication of notice and manner of holding the election shall be as prescribed by law for the holding of elections for the issuance of bonds by the political subdivision. Revenues derived from any taxes levied pursuant to such election shall be excluded from the tax base for the purpose of determining aggregate receipts for which the ten percent (10%) increase limitation applies.

(3) As an alternative to the procedure provided in subsection (2) of this section, the ten percent (10%) increase limitation prescribed in this section may be increased by an additional amount by the board of supervisors of any county without an election thereon if the aggregate receipts from all county levies to which this section and Sections 27-39-305 and 27-39-320 apply do not

exceed one hundred ten percent (110%) of the aggregate receipts from all such levies during any one (1) of the immediately preceding three (3) fiscal years, as determined by the board of supervisors.

(4) As an alternative to the procedure provided in subsections (2) and (3) of this section, the board of supervisors of any county or the governing authorities of any municipality may, without an election thereon, increase the ad valorem tax levy to which this section applies by the greater of:

(a) An ad valorem tax levy that does not result in an aggregate levy to which this section applies in excess of twenty (20) mills; or

(b) An ad valorem tax levy that is not in excess of any aggregate levy to which this section applies in any one (1) of the immediately preceding ten (10) fiscal years.

(5) In any county where there is located a nuclear generating power plant on which a tax is assessed under Section 27-35-309(3), the term "total receipts" as used in this section shall be the portion of the "base revenue" as defined in Section 27-39-320 which is used for General Fund purposes.

(6) If a shortfall occurs in revenues from sources other than ad valorem taxes and oil and gas severance taxes budgeted for the county or municipal general fund during the 1987 fiscal year, then the county or municipality, as the case may be, may levy a special ad valorem tax for the 1988 fiscal year in an amount the avails of which shall not exceed such shortfall; provided, however, that the aggregate receipts from all ad valorem levies for the county or municipal general fund for the 1988 fiscal year shall not exceed the aggregate receipts from this source for the immediately preceding fiscal year plus an increase not to exceed twenty percent (20%).

(7) If a shortfall occurs in revenues from oil and gas severance taxes budgeted for the county or municipal general fund during the 1987 fiscal year, then the county or municipality, as the case may be, may levy a special ad valorem tax for the 1988 fiscal year in an amount the avails of which shall not exceed such shortfall. The avails of such special ad valorem tax shall not be included within the ten percent (10%) increase limitation. The ad valorem taxes levied to offset the shortfall shall be deemed to be ad valorem tax receipts produced in the 1988 fiscal year for the purposes of determining the limitation on receipts for the succeeding fiscal years.

SOURCES: Laws, 1980, ch. 505, § 15; Laws, 1983, ch. 471, § 18; Laws, 1987, ch. 507, § 9; Laws, 1990, ch. 549, § 3; Laws, 1994, ch. 554, § 3, eff from and after July 1, 1994.

Editor's Note — Laws of 1990, ch. 589, § 55, effective July 1, 1990, provided that the Legislature by concurrent resolution adopted by the House and Senate in session prior to July 1, 1990, declares that sufficient funds are dedicated and made available for implementation of chapter 589, provides as follows:

"SECTION 55. (1) It is the intention of the Legislature that local school districts shall bear no cost of implementing any of the provisions of this act [Laws, 1990, ch. 589]. Any monetary mandates resulting from the passage of this act [Laws, 1990, ch. 589] shall be contingent solely upon full funding by the State of Mississippi.

"(2) In the event the school board of any school district shall choose, in its discretion, to expend local funds for the implementation of any provision of this act [Laws, 1990, ch. 589], it is the intent of the Legislature that these expenditures shall not be considered funds expended for the purpose of implementing a ”new program“ mandated by the Legislature and any such funds shall not be generated from any taxes levied as an exemption from the tax.”

Cross References — Proceeds of tax levy to support county cooperative service districts not included within increase limitation of this section, see § 19-3-113.

Inclusion in the ten percent increase limitation provided by this section of ad valorem tax levies for garbage and rubbish disposal systems, see § 19-5-21.

Applicability of the restrictions of this section to income derived from the lease or sale of certain property by an economic development district and paid into the general fund of the county, see § 19-5-99.

Inclusion of a portion of the proceeds of levies for water, sewer, garbage, or fire protection districts in the 10% increase limitation under this section, see § 19-5-189.

Ad valorem tax for acquisition and maintenance of railroad properties, see § 19-29-18.

Exemption from limitations of this section with respect to tax for benefit of firemen's and policemen's disability and relief fund, see §§ 21-29-117, 21-29-219.

Inclusion in the ten percent increase limitation under this section of ad valorem tax levies by public agencies, see § 21-27-175.

Provision that, for the purpose of the limitations set forth in this section, commissions for levies set by the board of supervisors shall be added to the base collections of the general county fund for the 1984-1985 year only, see § 25-7-21.

Characterization of revenues received by counties out of payments with respect to nuclear generating plants, for purposes of the growth limitation on ad valorem taxes, see § 27-35-309.

Applicability of this section to distribution of Tennessee Valley Authority in lieu payments to school districts and for construction of roads, see § 27-39-303.

Applicability of section to county-wide levy for the construction and maintenance of roads and bridges, see § 27-39-305.

Applicability of limitations of this section to municipal general ad valorem tax levy, see § 27-39-307.

Additional increases in county levies, see § 27-39-320.

Disposition of excess revenues collected from levies referred to in this section, see § 27-39-323.

Duty of chancery clerk with respect to excess receipts, see § 27-39-323.

Exclusion of county levy to defray costs of reappraisal from general limitation on increases of property taxes, see § 27-39-325.

Inclusion, as proceeds of ad valorem taxes, of proceeds of promissory notes issued because of shortfall in ad valorem taxes, see § 27-39-333.

Additional tax on persons engaging in business of renting motor vehicles, see § 27-65-231.

Local funds expended in implementing §§ 37-3-59 through 37-3-71 not exempt from tax increase limitation provision of this section, see § 37-3-77.

Implementation and funding of gifted education programs, see § 37-23-179.

Exclusion of tax receipts, used by junior colleges to repay loans, from growth limitations on ad valorem taxes, see § 37-29-103.

Exclusion from the revenue increase limitations imposed pursuant to this section of county taxes levied for the support, upkeep and maintenance of any public library or public library system, see § 39-3-5.

Exclusion from the revenue increase limitations imposed pursuant to this section of municipal taxes levied for the support, upkeep and maintenance of any public library or public library system, see § 39-3-7.

Exclusion from the limitations imposed by this section with respect to special tax levies against property within special parking facility taxing districts, see § 43-35-202.

Application of the provisions of this section to evidences of indebtedness issued for borrowing money from the Mississippi Board of Economic and Community Development, see § 57-61-37.

Characterization of certain contracts, undertaken pursuant to the Mississippi Superconducting Super Collider Act, as general obligation bonds, see § 57-67-17.

ATTORNEY GENERAL OPINIONS

Limitation merely puts ceiling on future tax levies and does not affect present taxation or revenue of levee districts; law imposing such limitation is presumed to be constitutional and valid until declared otherwise by court of competent jurisdiction. Tindall, Sept. 6, 1990, A.G. Op. #90-0666.

Ten percent limitation may be increased only if proposed increase is approved by majority of those voting, and determination of whether increase was approved by electorate is to be made on basis of total votes cast in hospital district and not on basis of subtotal for separate supervisors' districts; one election is to be held for entire hospital district, rather than separate elections within district, and Notice to Call for the Election may state that Board would be authorized to levy "up to five mills" rather than exact amount of tax levy to be imposed. Chamberlin, Sept. 23, 1992, A.G. Op. #92-0748.

Increases in any tax levied by county are subject to limitations and election requirements unless tax is expressly exempted; county tax to support community hospital owned in whole or in part by county is not expressly exempted. Chamberlin, Oct. 21, 1992, A.G. Op. #92-0792.

Increase in ad valorem taxes for purpose of providing for collection and disposal of garbage is subject to limitation set forth in Miss. Code Section 27-39-321. Stone, Apr. 28, 1993, A.G. Op. #93-0300.

The levy imposed by Section 21-37-43 is not exempt from the 10% limitation of either Section 27-39-320 or Section 27-39-321. Bordis, Jan. 31, 2003, A.G. Op. #03-0020.

Due to the fact that the funds received in a lawsuit settlement or court verdict are not realized from the proceeds of the county's ad valorem tax levy, there is no requirement to reduce the following year's tax levy. Hemphill, Oct. 29, 2004, A.G. Op. #04-0498.

§ 27-39-323. Excess receipts; duty of chancery clerk.

Except as otherwise provided for excess revenues generated by a county in accordance with subsection (3) of Section 27-39-321 or subsection (2) of Section 27-39-320, if revenue collected as the result of any individual levy referred to in Section 27-39-321 or the aggregate revenue collected from all levies referred to in Section 27-39-320 which are limited to an increase of not more than ten percent (10%) over the receipts from the same for any one (1) of the immediately preceding three (3) fiscal years, as determined by the levying governing authority, exceeds such limit, then it shall be the mandatory duty of the chancery clerk of each county and the clerk of each municipality to deposit such excess receipts over and above the ten percent (10%) increase limitation into a special account and credit it to the fund for which such levy was made. It will be the further duty of the chancery clerk and the city clerk to hold said funds and invest the same as authorized by law and to report the total to the board of supervisors or the municipal governing authorities, as the case may be, at its regular August meeting of each year. Such excess funds shall be calculated in the budgets for the county and for the municipality, respectively, for the purpose for which such levies were made, for the succeeding fiscal year. Taxes imposed for the succeeding year shall be reduced by the amount of excess funds available.

Under no circumstances shall such excess funds be expended during the fiscal year in which such excess funds are collected.

SOURCES: Laws, 1980, ch. 505, § 16; Laws, 1987, ch. 507, § 10; Laws, 1990, ch. 549, § 4; Laws, 1994, ch. 554, § 4, eff from and after July 1, 1994.

Cross References — Particular limitations upon increases of taxes levied, see §§ 27-39-320, 27-39-321.

Exemption of funds described in Sections 27-39-323 and 27-39-329(2)(b) from provision for borrowing in anticipation of receipt of funds from confirmed federal or state grants or loans, see § 19-9-28.

Inclusion, as proceeds of ad valorem taxes, of proceeds of promissory notes issued because of shortfall in ad valorem taxes, see § 27-39-333.

§ 27-39-325. Authority of counties to levy on taxable property within county to defray cost of reappraisal.

The board of supervisors of any county having a plan or contract for reappraisal which has been approved by the State Tax Commission may annually levy an ad valorem tax on all the taxable property within the county, in an amount necessary to defray the cost of reappraisal. The funds derived from the levy shall be placed in a special account and shall be used only for the expenses involved in reappraisal or for repaying any amounts of indebtedness incurred for that purpose. The board may borrow money or issue its notes at the rate of interest to maturity allowed in Section 75-17-105 for the purposes of reappraisal and may pledge the avails of the levy authorized herein for the payment of the principal of and the interest on the indebtedness. The indebtedness incurred for the purpose of defraying the cost of reappraisal shall not be included in computing the debt limit of the county under any present or future law.

No board of supervisors shall make the levy authorized herein for a period of years longer than necessary to pay for reappraisal of property within the county or to repay any indebtedness authorized herein. Provided, however, an ad valorem tax on all the taxable property within the county may be levied in an amount sufficient to defray the cost of maintaining and updating appraisals and an ownership mapping system including, but not limited to, costs for the purchase and maintenance of computer equipment and motor vehicles and costs for computer services and remuneration of certified appraisers and other necessary personnel. The tax levies authorized herein shall not be included in the ten percent (10%) limitation on increases under Section 27-39-321.

This section shall also apply to the board of supervisors of any county which has reappraised in compliance with the State Tax Commission regulations and has an outstanding indebtedness incurred to fund such reappraisal of property.

The tax levies authorized in this section shall not be reimbursable under the provisions of the Homestead Exemption Law of this state.

SOURCES: Laws, 1980, ch. 505, § 19; Laws, 1983, ch. 471, § 19; Laws, 1984, ch. 422, § 6; Laws, 1985, ch. 462, eff from and after passage (approved April 3, 1985).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Homestead Exemption Law generally, see § 27-33-1 et seq.

Rate of interest which the notes described in this section shall bear, see § 75-17-105.

ATTORNEY GENERAL OPINIONS

The State Tax Commission does not have statutory authority to approve maintenance contracts and financing arrangements associated with such contracts, thus it is not necessary for the Commission to approve all expenditures on a project to update a mapping system used in reappraisal. Meadows, May 28, 1992, A.G. Op. #92-0374.

§ 27-39-327. Repealed.

Repealed by Laws, 1983, ch. 471, § 20, eff from and after September 30, 1983.

[En Laws, 1980, ch. 505, § 20]

Editor's Note — Former § 27-39-327 related to the authority of a county to levy ad valorem tax to be used for any purpose authorized by law.

§ 27-39-329. County ad valorem tax levy for payment of bonds or notes and for other authorized purposes.

(1) Each county shall, in addition to all other taxes authorized by any statute and notwithstanding any limitation provided in this article, levy ad valorem taxes pursuant to subsection (2) of this section.

(2)(a) Any county which has, prior to October 1, 1982, under the provisions of Section 27-39-3, or any other statute authorizing the retention of any state millage or the levying of any county millage, retained a net amount of revenue produced by the state ad valorem tax collected in such county or levied any tax, the proceeds of which have been committed for any purpose authorized by Section 27-39-7 or any other statute authorizing the retention of any state millage or the levying of any county millage, or for the support of a water management district, development district or other district or authority created by law for the improvement and development or operation of a port or harbor or for the payment of any bonds, notes or other indebtedness, or for any other purpose authorized by any statute authorizing the retention of any state millage or the levying of any county millage, shall, for the Fiscal Year 1983 and annually thereafter, levy a tax sufficient to produce the amount of revenue necessary to fulfill such commitment or pay all such bonds, notes or other indebtedness together with the interest thereon as the same shall become due and payable, to continue at the same level the support and operation of such authority or district created by law, as long as the county remains a member, and to fulfill any other purpose authorized by any statute authorizing the retention of any state millage or the levying of any county millage. Any county which has, pursuant to a contract between the Mississippi Board of Economic Development or its predecessor and a city located therein, retained a net amount of revenue, produced by two (2) mills of the state ad valorem tax collected in such county, the proceeds of which have been committed for the improvement, development, operation and expansion of a state port or for the payment of any indebtedness incurred for such purposes, shall, for the Fiscal Year 1983 and annually thereafter until the completion of property reappraisal as certified by the State Tax Commission, levy a tax of two (2) mills to fulfill such commitment consistent with the terms of said contract; however, for the fiscal year after property reappraisal as certified by the State Tax Commission and annually thereafter, such county shall levy an ad valorem tax sufficient to generate revenue equal to the avails of the two-mill levy imposed for the fiscal year next preceding the initial use of such reappraised property values, to fulfill such commitment consistent with the terms of said contract.

Any county which is a member of the Tombigbee River Valley Water Management District may at such time as the district, by determination of the U.S. Army Corps of Engineers, has completely fulfilled all its obligations as local sponsor for the Tennessee-Tombigbee Waterway Project pursuant to P.L. 79-525, 60 Stat. 634 (1946), and has completely fulfilled its obligations for any other lawful project where the district serves as local sponsor, elect to withdraw from or terminate its membership in said district. Upon completion as determined by the U.S. Corps of Engineers, and in order to withdraw from or terminate its membership in the district, the board of supervisors of any county so desiring shall declare its intention by adopting a resolution so stipulating and spreading such executed resolution upon its minutes and publish such resolution once each week for three (3) consecutive weeks in some newspaper published in the county or in a newspaper having a general circulation therein. If, within the time of giving notice, twenty percent (20%) or fifteen hundred (1500), whichever is less, of the qualified electors of the county shall protest or file a petition against the county's withdrawal from or termination of its membership in the district, then such withdrawal or termination of membership shall not occur unless authorized by a majority of the qualified electors of such county voting at an election to be called and held for that purpose. If the county's withdrawal from or termination of its membership in the district is authorized in the manner set forth herein, the board of supervisors shall mail by regular U.S. Mail a certified copy of its executed resolution to the general office of the Tombigbee River Valley Water Management District. Upon full compliance as heretofore and hereafter directed, the Tombigbee River Valley Water Management District shall enter its order on its minutes terminating or withdrawing the membership of the county as of September 30 following, thereby approving the termination or withdrawal of the county and suspending the levy or levies of ad valorem taxes used to support the district. Provided, however, that the board of supervisors shall not suspend the levy or levies of any millage pledged to support the issuance of any bonds or notes in the name of the district during the period of time that such county was a member of the district and which levies were outstanding at the time of the withdrawal and/or termination; and it is further provided, said county shall be liable and responsible for its pro rata share of any present and/or subsequent judgments or liens filed against the district until the statute of limitations shall have run against the district. "Pro rata share" shall be determined by dividing the total ad valorem tax contribution of such withdrawing county by the total of all ad valorem tax contributions of all member counties in the district multiplied by the total of the outstanding bonded indebtedness and other indebtedness funded by such ad valorem levy or levies, as of the date such indebtedness was incurred.

After the commitment has been fulfilled and is certified by the State Tax Commission as having been fulfilled, the board of supervisors may continue to levy a millage for each fiscal year necessary to produce that same dollar amount as the previous fiscal year for the same purpose or for any other purpose for which any portion of the former state ad valorem tax levy could heretofore have been retained, or for general county purposes. After such commitment has been fulfilled, any county which chooses to continue a levy for the same purpose for which such levy was being made may do so in its discretion. Any county which wishes to continue a levy for any other purpose for which the state ad valorem tax could have been retained or for general county purposes may do so only after an election has been held as follows: such tax shall not be levied until the board shall have published notice of its intention to levy same; said notice to be published once each week for three (3) weeks in some newspaper having a general circulation in the county, but not less than twenty-one (21) days, nor more than sixty (60) days, intervening between the time of the first notice and the meeting at which said board proposes to levy such tax. If, within the time of giving notice, twenty percent (20%) or three thousand (3,000) of the qualified electors of the county, whichever is less, shall protest or file a petition against the levy of such tax, then such tax shall not be levied unless authorized by a three-fifths (3⁄5) majority of the qualified electors of such county, voting at an election to be called and held for that purpose.

In all cases where a county which is a member of the Pat Harrison Waterway District levied an ad valorem tax for the 1996 calendar year for any purpose authorized in this paragraph (a), such levy is hereby ratified, confirmed and validated.

(b) Beginning with taxes levied for the Fiscal Year 1983, each county shall levy each year an ad valorem tax of one (1) mill upon all taxable property of the county which may be used for any purpose for which counties are authorized by law to levy an ad valorem tax, but the avails of such tax levy shall not be expended unless and until the State Tax Commission has certified that the county has a method of maintaining assessment records in accordance with commission rules and regulations, has an ownership mapping system as provided in Section 27-35-53 in conformity with commission specifications, maintains certified appraisers as provided in Section 27-3-52, and complies with requests by the commission for sales data under Section 27-3-51.

In the event the commission enters its order directing that the avails of this levy be paid to the commission pursuant to Section 27-35-113, then the county shall comply with the commission's directions and the monies paid shall remain in escrow until the county is in compliance with acceptable performance standards for the appraisal of property in accordance with Section 27-35-113.

The commission, prior to October 1 of each year, shall notify each county whether or not it is certified as being in compliance with the requirements of subsection (2)(b). A copy of the notice shall be forwarded to the State Auditor. Any county not certified as being in compliance with any requirements of this subsection (2)(b), except where the commission has entered its order requiring the escrowing of these funds pursuant to Section 27-35-113, shall deposit the avails of the levy described herein in an interest-bearing special account and such avails, including interest earned thereon, shall not be expended until such county has been certified by the commission, for each fiscal year, to be in compliance with this subsection (2)(b).

(c) The tax levies required in this section shall not be exempt under the provisions of Section 27-31-101.

SOURCES: Laws, 1980, ch. 505, § 21; Laws, 1981, ch. 538, § 1; Laws, 1981, Ex. Sess. Ch. 5; Laws, 1982, ch. 502; Laws, 1983, ch. 471, § 21; Laws, 1987, ch. 507, § 6; Laws, 1990, ch. 498, § 7; Laws, 1995, ch. 559, § 9; Laws, 1997, ch. 539, § 1, eff from and after passage (approved April 10, 1997).

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1990, ch. 498, § 8, provides as follows:

"SECTION 8. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Sections 27-39-3 and 27-39-7 referred to in (2)(a) were repealed by Laws of 1980, ch. 505, § 24 (as amended by Laws of 1981, 1st Ex. Sess, ch. 5, § 1), effective September 30, 1982.

Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Section 57-1-2 provides that wherever the term "Board of Economic Development" appears in the laws of the State of Mississippi, it shall mean the Department of Economic and Community Development.

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in subsection (1) was corrected by substituting "this article" for "Article 3, chapter 39, Title 27, Mississippi Code of 1972."

Cross References — Requirement that counties comply with request of state tax commission for sales data on certain real property before avails of one mill levy can be expended under this section, see § 27-3-51.

Prohibition against expending proceeds from tax levies authorized by subsection 2 (b) of this section until county tax assessor provides accurate realty sales data to Department of Revenue, see § 27-3-51.

Payment for increased compensation of tax assessors upon completion of Mississippi Education and Certification program for appraisals, see § 27-3-52.

Exemptions from local ad valorem taxation, see § 27-31-101.

Homestead exemptions, see § 27-33-3.

Duty of county board of supervisors to provide ownership maps to assessor for purposes of assessment, see § 27-35-53.

Requirement that county pay over to commission portion of levy provided for in this section, upon county's failure to achieve compliance with accuracy standards for ad valorem assessments, see § 27-35-113.

Requirement that counties have certified appraisal personnel, see § 27-35-165.

For limitations applied to mandatory tax levied by this section, see § 27-39-320.

Inapplicability of general limitation on increases of property taxes to mandatory levies enumerated in this section, see § 27-39-321.

Provision that amount of bonds issued by a county industrial development authority shall not exceed the amount which can be repaid from funds pledged to the authority under this section, see § 57-31-9.

ATTORNEY GENERAL OPINIONS

A county tax levy previously imposed for the purpose of "economic, industrial and recreational development" within the county may, in the discretion of the board of supervisors, be continued to support these same purposes in the same dollar amount as before in accordance with the provisions of Section 27-39-329. Barry, November 1, 1996, A.G. Op. #96-0746.

Where the board of supervisors finds, based on appropriate facts, that a levy previously imposed for a specified purpose should be continued for that same purpose, then no election under Section 27-39-329 would be required to continue the levy. Barry, November 1, 1996, A.G. Op. #96-0746.

An industry exempt under Miss. Code

Section 27-31-101 is not exempt from paying the one mill ad valorem tax under Miss. Code Section 27-39-329. Jones, Aug. 15, 1997, A.G. Op. #97-0418.

Section 27-39-329(2)(c) precludes exemption of tax levies required under the section, and an industry exempt pursuant to Section 27-31-101 is not exempt from the one mill ad valorem tax authorized by Section 27-39-329. Burrow, Jr., Nov. 9, 2001, A.G. Op. #01-0664.

The statute does not require certified appraisers to be employees of the county and also does not require certified appraisers to devote their full time to the county, as long as full and complete services are being provided. Bolen, May 17, 2002, A.G. Op. #02-0255.

A member county must levy millage in a sufficient amount to produce the same amount of dollars for the Tombigbee River Valley Water Management District that the district received from the county based on the county's property tax millage rates set immediately prior to October 1, 1982, and this amount must be paid to the district every year. Carnathan, Mar. 14, 2003, A.G. Op. #03-0067.

As long as the Tombigbee River Valley Water Management District has obligations and commitments as a local sponsor for the Tennessee-Tombigbee Waterway Project as set forth in the statute or for any other lawful project, a county may not withdraw from the district. Carnathan, Mar. 14, 2003, A.G. Op. #03-0067.

The legislature intended to provide a certain amount of revenue to a port and did not intend that revenue to increase without limitation; i.e., a port may receive the support of tax levies by the county to the extent provided by Section 59-7-403 by means of Section 27-39-329, subject to the ten percent cap on increase in receipts over the previous year. Meadows, Mar. 14, 2003, A.G. Op. #03-0048.

In accordance with Section 57-3-33, projects and property financed under the provisions of said chapter are exempt from all taxation except taxes levied pursuant to Section 27-65-21, Sections 37-57-105 and 37-59-23, and taxes levied pursuant to Section 27-39-329 when said tax is levied expressly "for school district purposes"; a tax levied under Section 37-29-141 for the support of junior (community) college districts is not for "school district purposes." Beech, Mar. 17, 2006, A.G. Op. #06-0009.

§ 27-39-331. Funds for support of Mississippi Burn Care Fund.

The board of supervisors of any county is authorized and empowered, in its discretion, to set aside, appropriate and expend monies from the general fund to the Mississippi Department of Health, or the University of Mississippi Medical Center after the Mississippi Burn Center is operational, for deposit to the Mississippi Burn Care Fund.

SOURCES: Laws, 1985, ch. 394; Laws, 1986, ch. 400, § 20; Laws, 2005, 2nd Ex Sess, ch. 47, § 6; Laws, 2007, ch. 569, § 6, eff from and after July 1, 2007.

Cross References — Mississippi Fire Fighters Memorial Burn Center Fund, see § 7-9-70.

Mississippi Burn Center, see § 37-115-45.

ATTORNEY GENERAL OPINIONS

Funds received pursuant to Sections 21-19-58 and 27-39-331 by the Burn Association prior to the 2005 change in law should belong to the Delta Regional Medical Center. Anderson, Sept. 28, 2005, A.G. Op. #05-0402.

§ 27-39-332. Power and authority of county to levy tax to support Mississippi Burn Care Fund; power and authority of county to levy tax to support the construction and/or operation of Burn Center Lodge.

The board of supervisors of any county is authorized and empowered, in its discretion, to levy a tax not to exceed one (1) mill per annum upon all taxable property of the county, which shall be provided directly to the Mississippi Department of Health, or the University of Mississippi Medical Center after the Mississippi Burn Center is operational, to support the Mississippi Burn Care Fund.

SOURCES: Laws, 1989, ch. 445, § 1; Laws, 2005, 2nd Ex Sess, ch. 47, § 7; Laws, 2007, ch. 569, § 7; Laws, 2011, ch. 502, § 1; Laws, 2012, ch. 371, § 1, eff from and after July 1, 2012.

Cross References — Mississippi Fire Fighters Memorial Burn Center Fund, see § 7-9-70.

Mississippi Public Records Act of 1983, see § 25-61-1 et seq.

Mississippi Burn Center, see § 37-115-45.

ATTORNEY GENERAL OPINIONS

Tax funds that were collected for the Mississippi Firefighters Memorial Burn Center should be forwarded to the State Department of Health for the Mississippi Burn Care Fund. Norquist, Oct. 13, 2006, A.G. Op. 06-0488.

§ 27-39-333. Issuance of promissory notes in event of ad valorem tax shortfall.

(1) For purposes of this section, the following terms shall have the meanings ascribed herein:

(a) "Political subdivision" means any political subdivision which receives ad valorem tax revenue.

(b) "Levying authority" means any political subdivision having legal authority to levy ad valorem taxes for its operation or for the operation of another political subdivision.

(2) Any political subdivision which, during a fiscal year, estimates that the amount of the ad valorem taxes or other anticipated revenue from local sources to be collected therein is less than the amount estimated at the time of

formulation of its budget for the fiscal year due to circumstances which were unanticipated at the time of formulation of the budget and which will prevent the political subdivision from meeting its financial obligations may, with the approval of the levying authority for such political subdivision, issue promissory notes in an amount equal to the estimated shortfall of ad valorem taxes and/or revenue from local sources but in no event to exceed twenty-five percent (25%) of its budget anticipated to be funded from the sources of the shortfall for the fiscal year.

(3) The proceeds of such notes shall be used in the budget or budgets in which the shortfall occurred and shall be used solely to offset the shortfall in such budgets for the fiscal year. The rate of interest paid thereon shall not exceed that amount set forth in Section 75-17-105, Mississippi Code of 1972. The indebtedness shall be repaid in full, including interest thereon, in equal installments, during the three (3) fiscal years next succeeding the fiscal year in which the notes were issued. For the payment of such indebtedness, the levying authority for the political subdivision shall, at its next regular meeting at which ad valorem taxes are lawfully levied, levy an ad valorem tax sufficient to repay the indebtedness in full, including interest. The proceeds of the notes shall be included as proceeds of ad valorem taxes for the purposes of the limitation on increases in revenue for the next succeeding fiscal year under Section 27-39-305, 27-39-320, 27-39-321 or 37-57-107, Mississippi Code of 1972, whichever is applicable depending upon the purpose for which such proceeds are used.

(4) Any notes issued under this section prior to April 20, 1987, shall be repaid as provided in this section.

(5) For the purposes of Sections 27-39-305, 27-39-320, 27-39-321 and 37-57-107, the terms "revenue" and "receipts" when used in connection with the amount of funds generated in a preceding fiscal year shall include excess receipts collected in the next preceding fiscal year and deposited into a special account under Section 27-39-323.

SOURCES: Laws, 1985, ch. 514, § 28; Laws, 1986, ch. 457; Laws, 1987, ch. 507, § 11; Laws, 1988, ch. 466, § 12; Laws, 2005, 5th Ex Sess, ch. 23, § 2; Laws, 2006, ch. 308, § 2; Laws, 2008, ch. 556, § 3, eff from and after July 1, 2008.

Cross References — School districts may issue promissory notes, in event of revenue shortfall, in amount and manner prescribed in this section, see § 37-57-108.

ATTORNEY GENERAL OPINIONS

Before a city public school district can issue (a) promissory note(s) and provide notice to the city to levy an ad valorem tax sufficient to repay the indebtedness, the district must demonstrate that there was a shortfall for the fiscal year and that such shortfall will prevent the district from meeting its financial obligations for that year. Wallace, Dec. 10, 1999, A.G. Op. #99-0652.

RESEARCH REFERENCES

Am Jur. 68 Am. Jur. 2d, Schools § 95 et seq.

CJS. 78 C.J.S., Schools and School Districts §§ 699-880.

CHAPTER 41

Ad Valorem Taxes—Collection

General Provisions 27-41-1
Ad Valorem Taxes Upon Personal Property 27-41-101

GENERAL PROVISIONS

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27-41-83. Liability and actions for trespass or waste on lands forfeited to state.
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§ 27-41-1. Taxes; when due, payable and collectible.

Except as may otherwise be provided in Section 27-41-2, all state, county, school, road, levee and other taxing districts and municipal ad valorem taxes, except ad valorem taxes levied for county or district or municipal bonds and other evidences of indebtedness for money borrowed, and interest thereon, heretofore or hereafter assessed or levied shall be due, payable and collectible by the tax collector and shall be paid on or before the first day of February next succeeding the date of the assessment and levying of such taxes. All taxes levied for county and district and municipal bonds and interest thereon, or betterment or improvement assessments, shall be paid by each person assessed therewith on or before the first day of February next succeeding the date of the assessment and levying of the same, at the time of payment of the state and county ad valorem taxes, except as otherwise hereinafter provided in this chapter. The tax collector shall begin to accept payment for such ad valorem taxes or assessments not later than December 26 of the year prior to the year in which such taxes are required to be paid.

Any county may, by an order spread upon the minutes of the board of supervisors, allow the acceptance of partial payments for ad valorem taxes. Any municipality wherein municipal taxes are not collected by the county may, by an order spread upon the minutes of the governing authority of said municipality, allow the acceptance of partial payments for ad valorem taxes. If said partial payments are allowed by the county or municipality, said partial payments shall be made as follows:

(a) One-half (½) of all ad valorem taxes due shall be paid on or before February 1.

(b) One-fourth (¼) of all ad valorem taxes, interest and penalty due shall be paid on or before May 1.

(c) One-fourth (¼) of all ad valorem taxes, interest and penalty due shall be paid on or before July 1.

If any unpaid balance exists on August 1, then the lands shall be sold at the land sale on the last Monday in August for said unpaid balance.

All ad valorem taxes, however, assessed against motor vehicles as prescribed by the Motor Vehicle Ad Valorem Tax Law of 1958, for any and all purposes and in any and all jurisdictions, shall be paid in full on the date such taxes are due and payable.

SOURCES: Codes, 1942, § 9891; Laws, 1934, ch. 188; Laws, 1958, ch. 549, § 9; Laws, 1993, ch. 385, § 1; Laws, 1993, ch. 540, § 5; Laws, 1995, ch. 468, § 2, eff from and after January 1, 1996.

Editor's Note — Laws of 1993, ch. 540, § 11, effective October 1, 1993, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Collection of municipal taxes, see § 21-33-53.

Tax receipts given to taxpayer, see § 27-41-31.

Motor Vehicle Ad Valorem Tax Law of 1958, see § 27-51-1 et seq.

Time of payment of motor vehicle ad valorem taxes, see § 27-51-7.

Mobile home ad valorem tax, see § 27-53-11.

Refund of taxes, generally, see § 27-73-1 et seq.

Reciprocity with other states and territories in the collection of taxes, see § 27-75-1 et seq.

School taxes, see §§ 37-57-1 et seq.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.
2. Collection.

3.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.
7. Conveyance of property.
8. Liability of state.

I. UNDER CURRENT LAW.

1. In general.

These sections [Code 1942, § 9891 et seq.] do not authorize the state tax collector to bring suits for state and county ad valorem taxes after February 1, where there has been default in the payment of the first instalment, and accordingly such state tax collector may not recover claimed commissions against the county for taxes collected by reason of the institution of a suit by the state tax collector in June. Gully v. Lincoln County, 184 Miss. 784, 185 So. 795 (1939), error overruled, 184 Miss. 804, 186 So. 830 (1939).

2. Collection.

Commissions on the collection of state and county ad valorem taxes by virtue of a suit begun in June by the state tax collector could not be recovered where such suit by the state tax collector was premature in view of the fact that he was not authorized to intervene in the collection of taxes until after the third Monday in September, the primary duty for such collection being upon the sheriff as county tax collector until such time. Gully v. Lincoln County, 184 Miss. 784, 185 So. 795 (1939), error overruled, 184 Miss. 804, 186 So. 830 (1939).

With respect to state and county ad valorem taxes on personal property the power of the sheriff to make a sale of personal property under distraint for taxes, is not a finality until after August 1, and under the principle that the constitution places the primary duty to collect such taxes on the county tax collector, the state tax collector was not authorized to intervene in the collection of such taxes previously to the first day of August, nor for such a period of time thereafter as would be required for the sheriff to give the necessary notice and make the sale of the personal property in the manner required by law in the case of such sale, or, to make the period definite until after the third month in September. Gully v. Lincoln County, 184 Miss. 784, 185 So. 795 (1939), error overruled, 184 Miss. 804, 186 So. 830 (1939).

3.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

Where a tax levy was made to raise money to pay certain road bonds which could not be sold, it was proper for the board to rescind such levy and an injunction would lie by a taxpayer to restrain the collection of such taxes. Rhodes v. Robinson, 109 Miss. 114, 67 So. 899 (1915), error overruled, 109 Miss. 116, 68 So. 145 (1915).

Where several lots of land separated from each other and all of different values were assessed together at an aggregate valuation and the taxes on some of them were paid, the tax collector could not change the assessment so as to exclude the lots paid upon deducting from the aggregate valuation a part proportionate to the whole as the number of lots paid upon were to the entire number. A sale for taxes after such a change of the assessment by the collector would be void. Speed v. McKnight, 76 Miss. 723, 25 So. 872 (1899).

It was not necessary that there should be any mention or reference in the assessment to the county taxes. If the assessment was complete as to the state tax and there was a levy made of the county taxes by the supervisors, the tax collector might collect it all. Moore v. Foote, 32 Miss. 469 (1855).

7. Conveyance of property.

A grantee in a general warranty deed who purchased land after the taxes of the current year had become a charge thereon might, after the fifteenth of December, pay the taxes thereon not previously paid by the grantor and at once sue for and recover the sum so paid to protect the title, since it was the duty of the grantor to have paid them on or before said date. Swinney v. Cockrell, 86 Miss. 318, 38 So. 353 (1905).

8. Liability of state.

Where the testatrix provided for the payment by her executors of all her just and legal debts, taxes on real estate accruing and due for the year prior to her death, were to be paid by her executors and were not chargeable against the devisee of such real estate devised to him subject to one-half of the mortgage debt thereon. Eatherly v. Winn, 185 Miss. 742, 189 So. 99 (1939).

Decision of umpire designated by will to settle disputes between executors, determining that taxes on real estate devised subject to the mortgage debt thereon were not payable by the estate but by the devisee, was not binding on the devisee, where the provision for action by such umpire was designed to bring about harmony between the executors, and such decision was contrary to the manifest intention of the testatrix. Eatherly v. Winn, 185 Miss. 742, 189 So. 99 (1939).

ATTORNEY GENERAL OPINIONS

A tax collector may sell personal property that has been distrained and restricted for nonpayment of personal property taxes pursuant to either Section 27-41-1 or Section 27-41-15; the tax collector should separately sell pieces of personal property which are separately assessed. McWilliams, Mar. 23, 2001, A.G. Op. #01-

0129.

There is no authority for a county board of supervisors to forgive or reduce the amount of ad valorem taxes, penalties and interest due on property. O'Donnell, Feb. 7, 2003, A.G. Op. #03-0053.

A tax collector has the authority to refuse payment of ad valorem taxes by a third party who has not been assessed taxes for that property. This authority is subject to a factual determination by the tax collector that the property has not been sold for taxes and does not have that attached lien. Byrd, Mar. 12, 2004, A.G. Op. #04-0100.

A governing body may accept partial payments for ad valorem taxes according to the schedule set forth in Section 27-41-1. Belk, Mar. 11, 2005, A.G. Op. #05-0066.

RESEARCH REFERENCES

ALR. Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery. 80 A.L.R.2d 1040.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 737 et seq.

CJS. 84 C.J.S., Taxation §§ 1109-1112 et seq.

§ 27-41-2. Interlocal agreement for collection by county of ad valorem taxes due to municipality.

If the governing authorities of a municipality and a county have entered into an interlocal agreement pursuant to Section 17-13-1 et seq., and the agreement is for the county to collect for the municipality those ad valorem taxes on real and personal property, motor vehicles and mobile homes or unpaid special assessments as provided in Section 21-19-11 that are due and payable to the municipality, the following shall apply:

(a) The collection of such ad valorem taxes or unpaid special assessments as provided in Section 21-19-11 due by a taxpayer to the municipality shall be evidenced by a receipt showing that the taxes or assessments due have been paid. This receipt also may show that any ad valorem taxes or unpaid special assessments due by the taxpayer to the county have been paid.

(b) Property as described in this section that is sold for unpaid ad valorem taxes or unpaid special assessments due by a taxpayer to the municipality may be sold in a tax sale which may be conducted for unpaid ad valorem taxes or unpaid special assessments due by the taxpayer to the county. This unified tax sale for unpaid taxes or unpaid special assessments due the municipality and the county shall be advertised in substantially the same manner as provided by law for sales of like property for unpaid county ad valorem taxes or unpaid special assessments as provided in Section 21-19-11. The amount of taxes or special assessments for which the property is offered at the unified sale shall be the sum of the taxes or special assessments due by the taxpayer to the municipality and those due to the county. All costs incident to the unified sale shall be included in the total amount for which the property is offered.

(c) Upon offering the property of any delinquent taxpayer at a unified sale as described in paragraph (b) and upon the failure of any person to bid the whole amount of taxes or special assessments and all costs incident to the sale for such property, the county tax collector shall strike the property off to the state.

(d) Except as otherwise specified in this section, the collection of unpaid ad valorem taxes or unpaid special assessments as provided in Section 21-19-11 due to a municipality, the sale of property for unpaid ad valorem taxes or unpaid special assessments due a municipality, and the striking off to a municipality of property for unpaid ad valorem taxes or unpaid special assessments, shall be conducted in accordance with the laws governing the imposition of ad valorem taxes or special assessments as provided in Section 21-19-11 by a municipality.

SOURCES: Laws, 1993, ch. 540, § 1; Laws, 2008, ch. 405, § 1, eff from and after July 1, 2008.

Editor's Note — Laws of 1993, ch. 540, § 11, effective October 1, 1993, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Duty of tax collector of county in which mobile home is registered and assessed to collect ad valorem taxes thereon, except as provided in this section, see § 27-53-17.

ATTORNEY GENERAL OPINIONS

The amount of taxes for which property is offered at a unified sale should be the sum of the taxes due by the taxpayer to the municipality and the county plus costs of the sale, as required by subsection (b). McWilliams, Mar. 23, 2001, A.G. Op. #01-0129.

A municipality and county may enter into an interlocal agreement for the collection of ad valorem taxes on mobile homes by the county tax collector. James, Nov. 2, 2001, A.G. Op. #01-0668.

The county tax collector is not required to collect municipal taxes on mobile homes unless there is a contract between the city and the county. Wilkerson, Mar. 15, 2002, A.G. Op. #02-0079.

§ 27-41-3. Taxes levied for bonds, etc.; how installment payment of may be authorized.

The board of supervisors or municipal or other taxing districts, governing authorities or governing boards shall require all taxes levied for bonds and other evidence of indebtedness for money borrowed and interest or betterment or improvement assessments to be paid on or before the first day of February of each year.

SOURCES: Codes, 1942, § 9892; Laws, 1934, ch. 188; Laws, 1995, ch. 468, § 3, eff from and after January 1, 1996.

§ 27-41-5. Provisions of chapter applicable to municipalities.

The provisions of this chapter shall apply to all municipalities in the State of Mississippi, including those operating under special charters, provided, however, that municipalities operating under special charters, wherein ad valorem taxes become delinquent on any date other than February 1, may continue to collect such taxes as heretofore, and provided, further, that such municipalities operating under special charter may by ordinance provide for the payment of municipal ad valorem taxes in installments as is provided in this chapter except that such municipality shall have the power to fix the dates of the payment of the installments other than those fixed by this chapter.

SOURCES: Codes, 1942, § 9893; Laws, 1934, ch. 188.

Cross References — Collection of municipal taxes, see § 21-33-53.

JUDICIAL DECISIONS

1. Municipal tax collectors.

Provision of liability in Miss. Code Ann. § 27-41-79 for a tax collector who fails to properly file the tax-sale list is applicable to municipal tax collectors in addition to those duties imposed by Miss. Code Ann. § 21-33-63; the liability provision applies to municipal tax collectors because Miss. Code Ann. § 27-41-5 states that the provisions of Chapter 41 shall apply to all municipalities in the State of Mississippi, and Miss. Code Ann. § 21-33-53 prescribes the duties of the tax collector. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265 (Miss. 2014).

§ 27-41-6. Deferral by municipalities of ad valorem tax on real property or inventory levied upon new capital investments in land, buildings or depreciable fixed assets and improvements made by certain small enterprises meeting investment and employment criteria.

(1) Notwithstanding any other provisions of law to the contrary, the governing authorities of any municipality, in their discretion, may defer for a period of up to three (3) years ad valorem tax on real property and/or inventory, including ad valorem taxes imposed on commodities, products, goods, wares and merchandise held for resale, with the exception of school ad valorem taxes, levied upon any new capital investments in land, buildings, or depreciable fixed assets and improvements within the municipality made by any business or entity having less than fifty (50) employees whenever the new investment of such business or entity is at least One Hundred Thousand Dollars ($100,000.00), in the aggregate, and such new investment provides for the employment of at least five (5) new employees.

(2) The deferral of taxes provided for under subsection (1) of this section may be authorized by resolution duly adopted and entered upon the minutes of

the governing authorities of the municipality following receipt of an application filed with the governing authorities by the business or entity describing in detail:

(a) The total dollar amount of new capital investments proposed to be made;

(b) The property for which ad valorem taxation deferral is requested;

(c) A timetable for completion of the new capital investment project;

(d) A demonstration that the business or entity is financially sound and is likely to fulfill its commitments; and

(e) Any other information that the governing authorities of the municipality may require.

SOURCES: Laws, 2005, ch. 513, § 2, eff from and after passage (approved Apr. 20, 2005.)

§ 27-41-7. Postponement of taxes in violation of prior contracts not authorized.

Nothing in Sections 27-41-3 and 27-41-5 shall be construed to authorize any board of supervisors or the authorities of any municipality to postpone the payment of taxes in violation of any contract entered into prior to the passage of this chapter.

SOURCES: Codes, 1942, § 9894; Laws, 1934, ch. 188.

§ 27-41-9. Interest on taxes due; extension of due date by proclamation.

(1) If any person fails to pay the tax levied and assessed against him when due, he shall be required to pay, in addition to the amount of taxes unpaid after February 1, interest thereon at the rate of one percent (1%) per month, or fractional part thereof, from February 1 to the date of payment of such taxes. When the due date for any payment shall fall on a Saturday, Sunday or legal holiday then the payment shall be received by the tax collector on the first working day after such day or days without any interest being owed by the taxpayer.

The interest charge of one percent (1%) shall be collected and apportioned and paid into the state, county, levee board or drainage district or municipal treasury. That portion paid into the county or municipal treasury shall be paid into the general fund of such county or municipality.

If any taxpayer neglects or refuses to pay his taxes on the due date thereof, the said taxes shall bear interest at the rate of one percent (1%) per month or fractional part thereof from the delinquent date to the date payment of such taxes is made; provided that because of unusual conditions in any county where neither the taxpayer nor the tax collector is negligent or responsible for the delay incident to such tax payments, the Governor of the state may by proclamation before, on or after the due date of such tax payments extend the time for the imposition of this penalty for a period not to exceed sixty (60) days, and if necessary, for two (2) additional periods not to exceed sixty (60) days each.

(2) Such proclamation shall be filed with the clerk of the board of supervisors of the county affected thereby and shall not become effective until so filed. The proclamation shall be spread at large upon the minutes of the next regular meeting of the board of supervisors held after the date of the filing thereof.

SOURCES: Codes, 1942, § 9895; Laws, 1934, ch. 188; Laws, 1936, ch. 303; Laws, 1944, ch. 204, §§ 1, 2; Laws, 1982, ch. 346; Laws, 1985, ch. 396; Laws, 1986, ch. 460; Laws, 1991, ch. 521, § 1; Laws, 1992, ch. 406, § 1; Laws, 1995, ch. 468, § 4; Laws, 1999, ch. 391, § 1, eff from and after passage (approved Mar. 16, 1999.)

Editor's Note — Laws of 1992, ch. 406, § 2, effective from and after July 1, 1992, provides as follows:

"SECTION 2. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

ATTORNEY GENERAL OPINIONS

The interest calculation upon delinquent taxes is simple interest. Meadows, September 3, 1998, A.G. Op. #98-0550.

Any interest collected pursuant to the statute on delinquent taxes payable to a municipality should be placed into the municipal general fund; interest on delinquent taxes payable to some other entity, such as ad valorem taxes for school purposes, but levied by the municipality, should be paid to that entity, as those taxes are not payable to the municipality. Horne, May 11, 2000, A.G. Op. #2000-0250.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 751.

CJS. 85 C.J.S., Taxation § 1023.

§ 27-41-11. Enforcement of payment of taxes; liability of person assessed for fees, penalties, costs, and interest on taxes due.

It shall be the duty of every person assessed with state, county, school, road, levee and other taxing district and municipal ad valorem taxes to pay all such taxes to the tax collector on or before the due dates fixed and prescribed in Section 27-41-1 hereof, and if not paid, it shall be the duty of the tax collector to enforce payment thereof as hereinafter provided. If any person fails or neglects to pay the taxes levied and assessed against him as provided in this chapter on or before the due date fixed in Section 27-41-1 of this chapter, he shall be required to pay, in addition to the amount of taxes then due, all other fees, penalties and costs prescribed by law for failure to pay taxes when due, and in addition to the interest prescribed in Section 27-41-9 of this chapter.

SOURCES: Codes, 1942, § 9896; Laws, 1934, ch. 188; Laws, 1995, ch. 468, § 5, eff from and after January 1, 1996.

Cross References — Restraint of collection of taxes, see § 11-13-11.
Duties of tax collector of municipal taxes, see § 21-33-53.
Fees of tax collectors, see § 25-7-21.
Enforcement of motor vehicle privilege taxes, see § 27-19-127.
Recovery of taxes by action, see § 27-35-5.
Penalty for sale of lands on which taxes have been paid, see § 27-41-63.
School taxes, see § 37-57-1 et seq.
Forest acreage tax, see § 49-19-115.
Collection of drainage district taxes, see § 51-31-129.
Duty of executor or administrator to pay taxes, see § 91-7-157.

ATTORNEY GENERAL OPINIONS

Under Miss. Code Section 27-41-11, "it shall be the duty of the collector to enforce payment" of taxes that have been assessed and not paid; these responsibilities continue whether or not delinquency occurred before present tax collector took office. Sanders, Mar. 4, 1993, A.G. Op. #93-0100.

A governing authority does not have the power to refund penalties or interest resulting from a taxpayer's failure to pay taxes lawfully due, regardless of whether a tax statement was mailed or received by the taxpayer. Barry, Aug. 15, 1997, A.G. Op. #97-0460.

A tax collector has the authority to refuse payment of ad valorem taxes by a third party who has not been assessed taxes for that property. This authority is subject to a factual determination by the tax collector that the property has not been sold for taxes and does not have that attached lien. Byrd, Mar. 12, 2004, A.G. Op. 04-0100.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 788.

CJS. 85 C.J.S., Taxation §§ 1130 et seq.

§ 27-41-13. Failure to pay one installment matures all installments.

The failure to pay the taxes due and collectible as provided in this chapter, promptly on the due dates herein fixed, shall mature all taxes levied and assessed during any year then remaining unpaid.

SOURCES: Codes, 1942, § 9897; Laws, 1934, ch. 188.

§ 27-41-15. Taxes collected by sale of personalty.

Upon default of the payment of any taxes upon the due date prescribed in this chapter, the tax collector shall proceed immediately to collect all taxes then remaining in default and unpaid, by distress and sale of any personal property liable therefor; provided, however, that if the default relates to the payment of ad valorem taxes on personal property, the tax collector may proceed to collect all such installments in the manner provided for in Sections 27-41-101 through 27-41-109. Such sale shall take place at the courthouse door, unless the property distrained be too cumbersome to be removed; and five (5) days' notice of the time and place of sale shall be given by advertisements put up in three (3) public places in the county, one (1) of which shall be at the courthouse door; provided, however, that sales for delinquent municipal taxes shall be advertised in the manner and made at the place designated by ordinances adopted by such municipalities. The collector shall be allowed to collect and retain in addition to the taxes, interest, fees and costs, all necessary expenses of removing and keeping the property distrained. If sufficient personal property liable for taxes cannot be found by the tax collector, the tax collector may make a list of indebtedness due the taxpayer by other persons and sell the same as hereinafter provided. It shall be the duty of the tax collector to enforce the provisions herein contained, and to collect all the taxes due by distraint and sale of personal property; and the tax collector shall seize sufficient of the property of said person to pay said taxes by distress, action at law or in equity, which remedies shall be in addition to all other existing remedies. For any taxes levied against any lands due and remaining unpaid, after the fifteenth day of February and the fifteenth day of August the land shall be sold as provided by law for the sale thereof.

As an alternative to the authority granted under this section to county tax collectors to collect delinquent ad valorem taxes by distress and sale of personal property, the board of supervisors of any county, in its discretion, may contract with a private attorney or private collection agent or agents for the collection of delinquent ad valorem taxes on personal property in the manner provided in Section 19-3-41.

SOURCES: Codes, 1942, § 9898; Laws, 1934, ch. 188; Laws, 1956, ch. 418, § 4; Laws, 1995, ch. 468, § 6; Laws, 1995, ch. 496, § 2; Laws, 1995, ch. 435, § 6, eff from and after October 1, 1995.

Cross References — Sales for nonpayment of municipal taxes, see § 21-33-63. Collection of taxes by sale of debts, see § 27-41-47.

JUDICIAL DECISIONS

1. In general.

Statute means distress and sale of personalty for taxes, by the tax collector, as soon as practicable after February 1. Byers Mach. Co. v. Cobb Bros. Constr. Co., 182 Miss. 212, 179 So. 565 (1938).

Collector has power to sell personalty in September for taxes unpaid the preceding February 1. Byers Mach. Co. v. Cobb Bros. Constr. Co., 182 Miss. 212, 179 So. 565 (1938).

Sale of linotype machine for unpaid

taxes at courthouse which was two and one-half blocks from location of machine held void under statute requiring tax collector to have property present at sale, entitling mortgagee to cancellation of tax sale. Mergenthaler Linotype Co. v. Watkins, 176 Miss. 44, 168 So. 478 (1936).

The sale of property worth several thousand dollars for delinquent tax of $54 when only a part of said machinery might have been sold for the taxes was in excess of authority and void. Stuard v. Southern Engine & Boiler Works, 100 Miss. 895, 57 So. 218 (1911).

Property exempt from taxation cannot be distrained to coerce payment of a poll tax due by the owner. The poll tax under the constitution is a lien only on taxable property. Ratliff v. Beale, 74 Miss. 247, 20 So. 865 (1896).

ATTORNEY GENERAL OPINIONS

Tax collector is required to collect all delinquent taxes due on personal property by distraint and sale of property by directing sheriff to serve distrainer or writ of seizure and deliver property to tax collector who posts necessary notice and conducts sale. Brown, Nov. 25, 1992, A.G. Op. #92-0887.

Tax collector does not have statutory duty to give notice to owners that personal property taxes are delinquent, but may notify property owners that personal property taxes are delinquent; such taxes are lien upon property, and tax collector can direct sheriff to seize property which has lien on it and sell property. Brown, Nov. 25, 1992, A.G. Op. #92-0887.

Sheriff may deputize constable or county patrolman and designate duties to include serving distress warrants, and may, within constraints of budget, fix compensation to be paid for such service. Barry, Dec. 16, 1992, A.G. Op. #92-0916.

City tax collector is not restricted by Miss. Code Section 27-41-15 from accepting payment for personal property taxes due for 1992 tax year, when personal property taxes are due for 1991 tax year and have not been collected by distraint and sale of property. Bardwell, Apr. 21, 1993, A.G. Op. #93-0240.

Section 27-41-15 would apply to taxes which accrued and became delinquent prior to October 1, 1995. Hollimon, October 4, 1995, A.G. Op. #95-0568.

A tax collector may sell personal property that has been distrained and restricted for nonpayment of personal property taxes pursuant to either Section 27-41-1 or Section 27-41-15; the tax collector should separately sell pieces of personal property which are separately assessed. McWilliams, Mar. 23, 2001, A.G. Op. #01-0129.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 18, 21-23.

72 Am. Jur. 2d, State and Local Taxation §§ 640, 643, 812 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 171 et seq. (enforcement of tax liability); Forms 211 et seq. (sale of property for nonpayment of taxes).

CJS. 80 C.J.S., Sheriffs and Constables §§ 259-260.

84 C.J.S., Taxation §§ 1-3.

85 C.J.S., Taxation §§ 1167-1173, 1221.

§ 27-41-17. How installments reinstated.

Any taxpayer in default may at any time prior to the sale of his property, real or personal, for such taxes pay the delinquent installment or installments of such taxes plus all fees, interest and costs accrued, and all necessary expenses and reinstate his installment payments; and the balance of his installments of such taxes shall be due and payable as if such taxpayer had not been in default.

SOURCES: Codes, 1942, § 9899; Laws, 1934, ch. 188.

ATTORNEY GENERAL OPINIONS

Any taxpayer by paying the installments in default, plus fees, interest and costs accrued, and other expenses, has the right to reinstate the installment payments and will not be required to pay the full amount of the taxes at such time. The last installment is due on or before the first day of August. After such time the penalty attaching shall be computed on the amount of taxes then outstanding and unpaid. The two per cent attaches only to the unpaid installments. Interest and other costs will be computed just as interest and costs were computed where the first installment was not paid on or before the first day of February. 1939-41, A.G. Op. p. 122.

§ 27-41-19. Collector to assess and collect certain taxes.

Where the offices of tax collector and assessor are separate, the collector shall assess and collect taxes on land liable to taxation left unassessed by the assessor, and on land that has become liable to taxation since the last assessment. He shall also assess such other persons and personal property as he may find unassessed by the assessor. He shall report to the board of supervisors on making each monthly settlement, under oath, additional assessments made by him, a copy of which the clerk shall transmit to the auditor within ten (10) days, and he shall charge the amount of the state tax thereon to the collector; provided, however, that the collector's right to assess and collect taxes on lands liable to taxation, left unassessed by the assessor, shall not be for a longer period than seven (7) years from the date when his right so to do first accrued.

SOURCES: Codes, 1942, § 9901; Laws, 1934, ch. 188; Laws, 1960, ch. 472; Laws, 1968, ch. 361, § 20, eff from and after January 1, 1972.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14, Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Commissioner of Revenue's investigation of property escaping taxation, see § 27-3-39.

Assessment of property and persons escaping taxation in former years, see §§ 27-35-155, 27-35-157.

Tax delinquent lands removed from list of state lands, see § 27-35-159.

Collection of taxes from persons about to leave county or remove property, see § 27-35-161.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. Constitutionality.
2. Construction and application.

3.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. Generally.

I. UNDER CURRENT LAW.

1. Constitutionality.

A previous similar section was held to be constitutional. Board of Supvrs. v. Tate, 78 Miss. 294, 29 So. 74 (1900); Powell v. McKee, 81 Miss. 229, 32 So. 919 (1902).

2. Construction and application.

Under this section [Code 1942, § 9901], collector has authority to assess minerals which assessor has refused to assess separately from surface of land and, as manner of making assessment is not prescribed by statute, assessment by making notation "M.R.," understood to mean mineral rights by collector, on roll on line where land was listed for taxes is not invalid method of assessment. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Supreme court may properly presume that collector, who has made an assessment of minerals left unassessed by assessor as authorized by this section [Code 1942, § 9901], reported each month to the supervisors the additional assessments made. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Separate mineral assessments made by collector will be presumed to have been approved by board of supervisors when taxes have been collected on such assessments and paid into respective county and state treasuries and there is no definite proof that supervisors did, or did not, enter order approving assessment. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Taxpayer who has caused minerals to be assessed to himself by collector separately from surface is not required to appear before board of supervisors and insist that board enter order approving assessment made by collector when it appears that board of supervisors would not assess minerals separately from surface and that taxpayer followed general method adopted throughout county in assessing minerals. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Taxpayer who has caused minerals to be separately assessed to himself by collector is not required to institute mandamus proceedings against the supervisors to compel them to enter order approving assessment as made by collector, when taxpayer has information that board of supervisors would not assess minerals separately from surface of land. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Tax sale purporting to convey entire property does not convey to tax purchaser minerals in the land separately owned and separately assessed by tax collector, where the tax roll in hands of collector showed the separate assessment, and the roll, as well as copies of tax receipts, disclosed fact that taxes on minerals for two years before sale had actually been paid. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

3.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. Generally.

Land assessed and approved by the supervisors on the assessment roll cannot be back assessed. Long Bell Co. v. McLendon, 127 Miss. 636, 90 So. 356 (1922).

It is the duty of the assessor at any time to assess property that has escaped taxation for former years. State ex rel. Dist. Att'y v. Simmons, 70 Miss. 485, 12 So. 477 (1893).

If an entire assessment roll be invalid, it may be certified as an additional assessment to the board of supervisors of property left unassessed, and if the board approve it as such, it becomes valid. Cato v. Gordon, 62 Miss. 373 (1884).

§ 27-41-21. Collection of taxes on railroads.

The tax collectors shall collect the taxes from railroads and all other taxes on property assessed by the state tax commission from the assessment rolls in all respects as he collects other taxes; but in case of a sale for delinquent railroad taxes, the collector shall first seize and sell personal property or lands other than the road bed; and, second, rolling stock; and, lastly, the road bed of the railroad in his county and in like manner, so far as practicable, in respect to other property assessed by the state tax commission, selling first that property which will least interfere with the business of such person or corporation.

SOURCES: Codes, 1942, § 9902; Laws, 1934, ch. 188.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Assessment of taxes on railroads and other public service companies, see § 27-35-301 et seq.

§ 27-41-23. Currency and warrants receivable for taxes generally.

All coins made current by the laws of the United States, United States treasury notes, and national bank currency, or any lawful money or currency of the United States, shall be received by tax collectors in payment of taxes due the state. In addition thereto, all warrants drawn by the auditor on the state treasurer according to law shall be received in payment of taxes due to the state by the persons to whom such warrants were originally issued, provided, such warrants do not exceed an amount of the state taxes due by the taxpayers to whom such warrants were originally issued. All warrants drawn on the county treasurer according to law shall be received in payment of county taxes, unless otherwise provided by law.

SOURCES: Codes, 1942, § 9903; Laws, 1934, ch. 188.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Warrants issued by auditor of public accounts, see § 7-7-35.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.
7. Liability of tax collector.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

Previous similar enactment of this provision (Code 1930, § 3232) did not preclude a tax collector from receiving a check as a tentative payment. Gulley v. Wisdom, 69 F.2d 495 (5th Cir. 1934).

Taxes are not extinguished by collector's acceptance of a check therefor where the check is not paid. Moritz v. Nicholson, 141 Miss. 531, 106 So. 762 (1926).

7. Liability of tax collector.

Tax collector, as official, held not liable to taxpayer for amount of check for taxes, for tax collector's negligence in failing within reasonable time to present check for payment to bank which then became insolvent. Sunflower Compress Co. v. Clark, 172 Miss. 256, 153 So. 823 (1934).

Surety on tax collector's official bond held not liable to taxpayer for amount of check for taxes, for tax collector's negligence in failing within reasonable time to present check for payment to bank which then became insolvent. Sunflower Compress Co. v. Clark, 172 Miss. 256, 153 So. 823 (1934).

However, tax collector, personally held liable under common law to taxpayer for amount of check for taxes, for his negligence in failing within reasonable time to present check for payment to bank which then became insolvent. Sunflower Compress Co. v. Clark, 172 Miss. 256, 153 So. 823 (1934).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 745, 746.

CJS. 84 C.J.S., Taxation §§ 1032-1034.

§ 27-41-25. Certain county warrants receivable.

It shall be the duty of the county superintendent of education, upon the request of any person entitled to receive pay certificates issued by the county superintendent of education, to make out and deliver to said person a pay certificate in an amount equal to the state, county, and county district taxes of said person, upon presentation by said person of the county tax collector's statement showing the amount of taxes due by said person, provided, however, that in no instance may the county superintendent of education issue a pay certificate in a sum greater than the amount legally due such person.

When the county superintendent's pay certificates are issued as provided in the first paragraph of this section, it shall be the duty of the chancery clerk to issue the school warrants of the county or district to such person or persons in the amounts shown on the face of such county superintendent's certificates.

It shall be the duty of county tax collectors of the counties in which the warrants are issued to accept and receive such warrants for state, county and district taxes due by persons to whom the warrants were issued. The county tax collector shall receive credit for said warrants so received in his monthly settlements with the county auditor and state auditor, and said amounts shall be charged to the proper fund.

SOURCES: Codes, 1942, § 9904; Laws, 1931, ch. 32.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989,ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

§ 27-41-27. Collector not to speculate in warrants.

A warrant against the state shall not be received from any tax collector in settlement or otherwise without affidavit being made by the tax collector, which the state auditor or the state treasurer is authorized to take and preserve, that he received such warrant from the original payee therein named in payment of state taxes due by such original payee and for no other purpose or purposes.

A warrant against the county shall not be received from any tax collector in settlement or otherwise without affidavit being made by the tax collector, which the county auditor or the county treasurer is authorized to take and preserve, that he has paid the full amount expressed on the face of the warrant and has not directly or indirectly speculated therein.

SOURCES: Codes, 1942, § 9905; Laws, 1934, ch. 188.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Seller's recovery of claim unlawfully brought by public officer, see § 25-1-49.

§ 27-41-29. Furnishing tax receipts to collectors; receipt books; alternative electronic filing procedure.

(1) Except as otherwise provided in subsection (2) of this section, the board of supervisors of each county shall furnish the tax collector of the county with a sufficient number of tax receipts, in books, printed in triplicate, in blank form, numbered serially by the bookmaker. The chancery clerk shall first make a record of all such receipts by numbers and shall take the tax collector's receipt therefor and shall thereafter credit the tax collector with all unused receipts. Such tax receipts shall be prepared and printed so as to conform to the provisions of this chapter with reference to the payment of taxes and with reference to the payment of taxes levied for bonds and interest on or before the first day of February of each year. Duplicate receipts shall be preserved in the book and be submitted to the board of supervisors or the county auditor by the tax collector whenever required, and receipt books, with duplicates when filled in, shall be filed in the office of the chancery clerk for reference, and shall be receipted for by the clerk and carefully preserved as records. The expense of printing and binding said receipt books shall be paid out of the county treasury.

(2) As an alternative to the procedure prescribed in subsection (1) of this section, the State Auditor may prescribe methods whereby the tax collector of the county may furnish the tax receipts, preserve duplicate receipts and file duplicate receipts in the office of the chancery clerk in a manner that is compatible with available electronic technology.

SOURCES: Codes, 1942, § 9906; Laws, 1934, ch. 188; Laws, 1995, ch. 468, § 7; Laws, 1998, ch. 455, § 1, eff from and after July 1, 1998.

Cross References — Municipal tax receipts complying with requirements for installment payment of taxes, see § 21-33-49.

Other tax receipt provisions, see § 27-41-33.

Criminal penalty on tax collectors and chancery clerks for failure of duty in respect of duplicate tax receipts, see § 97-11-45.

§ 27-41-31. Tax receipts given taxpayer; contents of receipt; duplicates of receipts; treatment of real property as to which previous taxes are delinquent; advance payment of taxes.

(1) Each collector shall give to everyone paying taxes a signed receipt, dated, numbered and filled in, so as to show by whom, and on what, taxes were paid, the amount of realty and personalty assessed; and the rate of levy for bonds and the interest thereon, and the rate of levy for the state, and the rate for all other purposes, and separately the amount of the state tax, the amount of the county tax, and other taxes, shall be written at the head of the receipt, which shall be prepared for such purpose and in preparation of which due regard shall be had for the requirements of this chapter. Said receipt shall show the amount of tax payable on the first day of February, and shall show the amount of taxes due for bonds and interest on the first day of February of each year, and the amount of taxes due for county and district purposes separately from the amount due for state purposes and said receipt shall likewise show the total amount of taxes to be paid for the fiscal year. In the case of real property, the receipt shall specify the real property on which the taxes are paid, as it is described on the assessment roll and taken from the tax receipt book of receipts; and the duplicate of the receipt, numbered, dated, and filled in so as to be an exact copy of the original receipt, shall be left in its proper place in the book of receipts.

(2) As to any real property on which taxes for any previous year were not paid, the tax collector shall give notice of the delinquent taxes by stamping on the current tax receipt the fact that previous taxes are delinquent. The tax collector shall not accept payment of current year taxes for real property which has sold for delinquent taxes until the taxpayer provides the tax collector with proof that the tax sales for such real property for the previous two (2) years have been redeemed in the chancery clerk's office. Failure of the tax collector to stamp tax receipts shall not void any tax sale. The tax collector shall have no liability for errors made in complying with the provisions of this subsection if such tax collector makes a good faith effort to comply with such provisions.

(3) Any person desiring to do so may pay all his taxes for the fiscal year at any time on or before the first day of February next succeeding the date of the assessment and levying of such taxes. It shall be the duty of the tax collector to issue a receipt in full for all taxes due by such taxpayer so desiring to pay and paying all of his taxes in advance of the due date herein prescribed.

SOURCES: Codes, 1942, § 9907; Laws, 1934, ch. 188; Laws, 1984, ch. 375, § 2; Laws, 1993, ch. 360, § 1; Laws, 1995, ch. 468, § 8, eff from and after January 1, 1996.

Cross References — Municipal tax receipts, see §§ 21-33-49, 21-33-51.

Homestead exemption provision for tax receipt, see § 27-33-51.

Other tax receipt provisions, see §§ 27-41-35, 27-41-43.

Criminal penalty on tax collectors and chancery clerks for failure of duty in respect of duplicate tax receipts, see § 97-11-45.

JUDICIAL DECISIONS

1. In general.

Deed of purchaser at tax sale for unpaid taxes was not sustained in suit to quiet title where owner introduced into evidence duplicate receipt issued pursuant to Hemingway's Code 1917, § 6956 (Hemingway's Code 1927, § 8241), showing owner paid taxes and where owner orally testified that he paid the taxes and such testimony was uncontradicted. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477 (1950).

This section [Code 1942, § 9907], was never meant to exclude parol evidence to show the land actually paid on where the same was inaccurately described in a statutory receipt; it simply means that the prescribed receipt is the only valid one in favor of the tax collector on his settlements. Perret v. Borries, 78 Miss. 934, 30 So. 59 (1901).

A tax sale made after the taxes have been paid is absolutely void. Perret v. Borries, 78 Miss. 934, 30 So. 59 (1901).

ATTORNEY GENERAL OPINIONS

A tax collector should not refuse a payment of any taxes upon any taxable property no matter from what source the payment is made. A.G. Op. (Opinion dated January 22, 1971).

§ 27-41-33. Form and contents of tax receipts.

The board of supervisors of each county shall furnish its tax collector a sufficient number of the prescribed tax receipts, in the manner required by law. Such tax receipts shall be prepared and printed with spaces to show the total assessment of the property on which the taxes are collected, together with a description of the property, the parcel identification number on the assessment roll where the assessment is listed, and if the property be an exempt home or not. They shall show the rate of levy, separately for each purpose, as required by law, the total tax levy, and the total amount of all taxes collected. If the property described in the receipt be an exempt home, as provided by the Homestead Exemption Law, there shall be shown separately the amount of taxes which would have been collected had the home not been exempt. The said tax receipts may contain such other and additional statements as may be prescribed.

SOURCES: Codes, 1942, § 9908; Laws, 1938, Ex. ch. 28; Laws, 1995, ch. 468, § 9, eff from and after January 1, 1996.

Cross References — Municipal tax receipts, see §§ 21-33-49, 21-33-51.

Homestead Exemption Law generally, see § 27-33-1 et seq.

Receipt in case of homestead exemption, see § 27-33-51.

Other provisions for tax receipts, see § 27-41-29.

Criminal penalty on tax collectors and chancery clerks for failure of duty in respect of duplicate tax receipts, see § 97-11-45.

§ 27-41-35. Furnishing of tax receipt to taxpayer.

The tax collector shall give to everyone paying taxes a signed receipt filled in as set forth in Section 27-41-33 and as otherwise required by law. In the event any home which is exempt from taxes as provided by the Homestead Exemption Law is not subject to any ad valorem taxes, then the tax collector shall give to the owner a receipt in the usual form but in the spaces provided on said receipt for the entry of the amount of taxes there shall be written the word "none."

SOURCES: Codes, 1942, § 9909; Laws, 1938, Ex. ch. 28.

Cross References — Municipal tax receipts, see §§ 21-33-49, 21-33-51.
Homestead Exemption Law generally, see §§ 27-33-1 et seq.
Homestead exemption provision for tax receipt, see § 27-33-51.
Other tax receipt provisions, see § 27-41-31.
Criminal penalty on tax collectors and chancery clerks for failure of duty in respect of duplicate tax receipts, see § 97-11-45.

§ 27-41-37. Authority and duties of tax commission as to tax receipts.

The state tax commission is hereby authorized and directed to prescribe the form for tax receipts to be used by the county tax collector, which shall be prepared so as to enable the tax collector to conveniently comply with the requirements of the preceding sections.

A sample of the form of tax receipts shall be sent by mail to the tax collector, to the chancery clerk, and to the president of the board of supervisors of each county prior to the 1st day of September of each year.

The forms prescribed as herein required shall be so made that the respective counties may add such further details as convenient and as permitted by law, but the general and basic arrangement of such forms shall not be changed.

SOURCES: Codes, 1942, § 9910; Laws, 1938, Ex. ch. 28; 1068, ch. 361, § 42, eff from and after January 1, 1972.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

§ 27-41-39. Collector's cash book; entry of each payment by collector; payment by one other than owner.

Each tax collector shall enter in a well-bound cash book kept for the purpose, the date and number of each tax receipt issued by him, the name of the person paying taxes, and the amount paid for each tax account, which entry shall be made at the time of issuing the receipt, and the total of the receipts entered on each page shall be shown and carried forward to the next succeeding page, so that the total amount collected, and the total amount for each tax account, will be readily disclosed by an inspection of the cash book.

Each collector shall also enter in the cash book, in immediate connection with the entries of amounts received by him, the amount of his payment of taxes to the state and county treasurers, respectively, giving the date of each payment, so that it can be seen by reference to the cash book whether the payment made to the state and county treasurers embrace all that he has collected, less his commissions. The cash book shall at all times be subject to the inspection of any state or county officer or agent, or any citizen of the state. Provided, however, if said taxes on land be paid not by the owner of said land but by another who is not a mere volunteer but which taxes should have been paid by such owner, or be paid by some person other than the owner which payor finds it necessary for his protection to pay such taxes, or be paid by some person other than the owner where such payor has such an interest in said land as makes it necessary for him to pay such taxes to get such outstanding claim for his protection, or be paid by some person other than the owner of said land at the request of the owner, and under such circumstances as would create a right of equitable subrogation, then and in either event the payor shall immediately notify, in writing, by registered mail with return receipt requested, any and all persons holding liens or deeds of trust, or mortgages shown by the records of deeds of trusts of the county where such land is situated of the payment of such taxes by such party other than the owner, addressed to such lienor or lienors at his or their last known post-office address. If such payor of taxes other than the owner shall fail to give such notice or notices as above provided for, then such payor shall not be entitled to subrogation or otherwise to obtain or be granted any prior equity upon the land on which taxes are so paid over such lienor or lienors.

SOURCES: Codes, 1942, § 9911; Laws, 1934, ch. 188.

Cross References — Tax collector's reports and records of motor vehicle ad valorem taxes, see § 27-51-25.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.
1.-5. [Reserved for future use.]
II. UNDER FORMER LAW.
6. In general.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

The books of a tax collector afford the basis for the ascertainment of the state of his accounts. Adams v. Conner, 73 Miss. 425, 19 So. 198 (1895).

If the collector shall have abstracted the records of his receipts and payments of taxes, his sureties cannot require that the state, after establishing his collections of the amount claimed, shall prove that he has not settled with the auditor. Gibson v. State, 59 Miss. 341 (1881).

§ 27-41-41. Disposition of cash book.

It shall be the duty of the tax collector to present the cash book, required by Section 27-41-39 to be kept by him, to the board of supervisors or county auditor when required. Upon final settlement with the auditor of public accounts, the cash book shall be produced before him, and he shall endorse on it the fact and the date of presentation, and that he has examined the entries it contains of payments made to him of state taxes, and that the entries are correct. The cash book shall remain in the office of the tax collector as a permanent record of the office, and when he goes out of office, his successor shall preserve the same.

SOURCES: Codes, 1942, § 9912; Laws, 1934, ch. 188.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14, Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — County treasurer's settlement of accounts with tax collector, see § 19-17-11.

Tax collector's credits, see § 27-29-1.

Tax collector's reports of collections, see §§ 27-29-11 through 27-29-15.

§ 27-41-43. Disposition of book of duplicate receipts.

The book of duplicate receipts for taxes provided for, whether filled or not, shall, at the time of making final report to the board of supervisors and county auditor each year, be delivered by the tax collector to the clerk of the chancery court, and be received, receipted for, and carefully preserved.

SOURCES: Codes, 1942, § 9913; Laws, 1934, ch. 188.

Cross References — Provisions for tax receipt books, see §§ 27-41-29, 27-41-33.

§ 27-41-45. Certification of assessment to other counties.

When the collector shall not find property in his county out of which to collect the taxes due by any person, and such person shall have property, real or personal, in another county, or shall have removed to another county, the collector shall certify the assessment to the collector of the county in which such person shall have property or to which he shall have removed; and such collector shall collect the taxes, with five per centum (5%) thereon, as in other cases, and pay the same, less the five per centum (5%), over to the collector from whom he received the assessment. If such assessment shall not be received in time to sell on the regular sale date, the collector may sell at any other convenient time, on giving the notice required in other cases.

SOURCES: Codes, 1942, § 9914; Laws, 1934, ch. 188.

Cross References — Seizure and sale of property of person about to leave county or remove property, see § 27-35-161.

Collection of taxes by sale of debts, see § 27-41-47.

Collection of mobile home taxes, see § 27-53-19.

§ 27-41-47. Authority for collection of taxes in certain cases by sale of debts.

If the taxes assessed shall not be paid when due, and sufficient real and personal estate cannot be found on which to levy the same, the collector shall ascertain who are indebted to the person liable for the taxes, and shall make a list thereof, and advertise the indebtedness for sale at the courthouse door, giving five days' notice in the manner prescribed for the sale of personal property distrained. He shall sell the indebtedness, of whatever kind, or so much as may be necessary to pay the taxes and costs, to the highest bidder, for cash, and make to the purchaser an assignment thereof. It shall be sufficient to describe the same, in general terms, as the indebtedness of the debtor to the party assessed for taxes, stating as near the amount as can be. Such sale and assignment shall vest the indebtedness in the purchaser, who shall be entitled to sue for and collect the same. If sufficient indebtedness cannot be found in his county to make the whole tax, the collector shall certify the whole or balance, as the case may be, to the collector of any other county where indebtedness may exist; and the collector receiving the certificate shall advertise and sell such indebtedness, and collect the taxes, with five percentum thereon, and pay over the tax, to the collector from whom the assessment was received. After the indebtedness shall have been advertised, it shall not be lawful for the owner thereof to sell, assign, collect, or compromise the same without paying the taxes. The tax collector may levy on the shares or interest of the delinquent taxpayer in any corporation, company, or partnership, and dispose of the same as if levied on under execution.

SOURCES: Codes, 1942, § 9915; Laws, 1934, ch. 188.

Cross References — Executions, generally, see § 13-3-111 et seq.

Municipal tax sales, see § 21-33-63.

Collection of taxes by sale of personalty, see § 27-41-15.

Certification of assessment to other counties, see § 27-41-45.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. In general.

I. UNDER CURRENT LAW.

1.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. In general.

Debts due to laborers for wages are subject to sale for delinquent poll taxes under this section [Code 1942, § 9915], since debts exempt from garnishment are not exempt from taxation. White v. Martin, 75 Miss. 646, 23 So. 289, 65 Am. St. R. 616 (1898).

§ 27-41-49. Collection by sale; notice to debtor.

It shall be the duty of the collector to give notice, in writing, to the debtor of such taxpayer, which notice shall bind the debt in his hands and to the delinquent taxpayer, if he be a resident of the county, five (5) days before sale. If the delinquent taxpayer be not a resident of the county, and the collector know his address, the notice shall be sent to him by mail immediately on advertising the indebtedness for sale.

SOURCES: Codes, 1942, § 9916; Laws, 1934, ch. 188.

RESEARCH REFERENCES

ALR. Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc, of tax foreclosure or sale. 43 A.L.R.2d 967.

Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments. 43 A.L.R.2d 988.

§ 27-41-51. Collection by sale; debts due taxpayer from state, county, city, town, village, or board.

The indebtedness of the state or any county, city, town, village, or board to any delinquent taxpayer shall be subject to sale as provided in Sections 27-41-47 and 27-41-49. Notice in such case shall be given to the person whose duty it is to issue warrants for payment of the indebtedness, and the sale shall entitle the purchaser to receive payment of the indebtedness.

SOURCES: Codes, 1942, § 9917; Laws, 1934, ch. 188.

§ 27-41-53. Collection by sale; redemption.

The owner of the debts or property sold under Sections 27-41-47, 27-41-49 and 27-41-51 shall have six (6) months from the day of sale in which to redeem his property, by complying with the conditions prescribed for the redemption of land sold for taxes; and the assignment of the debt or conveyance of the property by the collector shall be dealt with as provided for the conveyance of lands sold for taxes. The time for redemption shall not prevent the purchaser from exercising the rights of an owner, except the right to compromise or sell; but, in case of redemption, he shall be responsible for the real value of what he may have realized from the debt or property.

SOURCES: Codes, 1942, § 9918; Laws, 1934, ch. 188.

Cross References — Redemption of land sold for taxes, see § 27-45-1 et seq.

JUDICIAL DECISIONS

1. In general.

Case reversed on ground plaintiff denied statutory right of redemption where, although attempted redemption not pleaded, case was tried on theory right of redemption was issue, and defendants did not object to plaintiff's failure to plead. Byers Mach. Co. v. Cobb Bros. Constr. Co., 182 Miss. 212, 179 So. 565 (1938).

§ 27-41-55. Sales of land for taxes; advertisement.

Except as otherwise provided in Sections 27-41-2 and 27-41-59(2), after the fifth day of August in each year hereafter, the tax collector shall advertise all lands in his county on which all the taxes due and in arrears have not been paid, as provided by law, as well as all land which is liable to sale for the other taxes which have matured, as required by law, for sale at the door of the courthouse of his county or any place within the courthouse that the tax collector deems suitable to hold such sale. The place or method of the sale shall be designated by the tax collector in the advertisement of the notice of tax sale on the last Monday of August. If the sale is to be conducted online pursuant to Section 27-41-59(2), the advertisement shall contain instructions on how to bid, including, but not limited to, the times during which online bids may be made at the online sale. The advertisement shall be inserted for two (2) weeks in some newspaper published in the county, if there be one, but in counties having two (2) court districts the lands shall be advertised and sold in the district in which the lands are situated and put up at the courthouse door thereof, or as provided for in Section 27-41-59 for tax sales conducted online, and shall contain a list of the lands to be sold in alphabetical order by owner or in numerical order as they are contained in the assessment roll, in substance as follows:

Name of Owner	Division of Section	Section	Township	Range	State Tax	County Tax	Total Tax

or by such other description as it may be assessed. Land in cities and towns shall be described in the advertisement as it is described on the assessment roll. Errors in alphabetical or numerical order in the published or posted list of lands to be sold shall not invalidate any sale made pursuant to the notice.

In addition to the foregoing provisions, and at the option of the tax collector, advertisement for the sale of county lands may be made after the fifteenth day of February in each year with the sale of the lands to be held on the first Monday of April in each year, and all of the provisions which relate to the tax sale held in August of each year shall apply thereto.

SOURCES: Codes, 1942, § 9921; Laws, 1934, ch. 188; Laws, 1938, ch. 323; Laws, 1940, ch. 308; Laws, 1981, ch. 315, § 1; Laws, 1985, ch. 425, § 4; Laws, 1990, ch. 337, § 1; Laws, 1993, ch. 540, § 6; Laws, 2016, ch. 316, § 2, eff from and after July 1, 2016.

Editor's Note — Laws of 1993, ch. 540, § 11, effective October 1, 1993, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Miss. Code Ann. § 27-43-5 requires a chancery clerk to examine the records of deeds, mortgages and deeds of trust in his office for a period of six (6) years to determine the names and addresses of all mortgagees, beneficiaries and holders of vendors lanes of land to be sold for taxes. This statute makes no provision for person who have liens that have been in existence for more than six (6) years. In the U.S. Supreme Court case of Mennonite Board of Missions v. Adams, (1983) 462 U.S. 791, 77 LEd2d 180, 103 S. Ct. 2706, the U.S. Supreme Court stated "since a mortgagee clearly has a legally protected property interest, he is entitled to notice reasonably calculated to apprise him of a pending tax sale." When the mortgagee is identified and a mortgage is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address or by personal service. The Mississippi Supreme Court in the case of Deweese Nelson Realty Inc. v. Equity Services Company, (1986, Miss) 502 So. 2d 310 cited Mennonite Board of Missions v. Adams, supra, with favor. The Court suggested that the legislature consider the statutory procedure for notice of tax sales in light of Mennonite Board.

For purchasers at tax sales to cut-off existing lienholders over six (6) years old, there will have to be a showing that the lienholders have received actual notice of the pending tax sale. This issue has come up in several cases involving the U.S. Department of Agriculture and more such cases are expected if the chancery clerks do no notify all lienholders of record and not just those whose liens are six (6) years old or less.

Amendment Notes — The 2016 amendment, in the first paragraph, divided the first sentence into the first and second sentences by substituting a period for "provided that," in the first sentence, inserted "and 27-41-59(2)" and made a related change, in the second sentence, inserted "or method," added the third sentence, and inserted "or as provided for in Section 27-41-59 for tax sales conducted online" in the fourth sentence; and made minor stylistic changes throughout.

Cross References — Constitutional provision for sale of land for taxes, see Miss. Const. Art. 4, § 79.

Sales for nonpayment of municipal taxes, see §§ 21-33-57, 21-33-63.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.
2. Effect of failure to advertise.
3.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.
7. Time of sale.
8. Place of sale.

I. UNDER CURRENT LAW.

1. In general.

When construed together, §§ 27-41-55 and 27-43-3 require notice to be given by personal service, mail, and publication before a landowner's rights are finally extinguished by the maturing of a tax deed. DeWeese Nelson Realty, Inc. v. Equity Servs. Co., 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

On record which showed that corporate landowner had actually received tax redemption notice by mail and by personal service before its property interest was extinguished by the maturing of a tax deed, the corporation was not deprived of its property interest without due process of law. DeWeese Nelson Realty, Inc. v. Equity Servs. Co., 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

Entire scheme for selling lands and conveying title thereto, in dealing with delinquent tax sales, is statutory. Clanton v. Callender, 198 Miss. 614, 22 So. 2d 487 (1945).

Authority of board of supervisors to order sale of delinquent tax lands is limited strictly to that conferred by statute. Jackson v. Webster, 196 Miss. 778, 18 So. 2d 298 (1944).

2. Effect of failure to advertise.

Where the record title holder's true address was never on the quitclaim deed because the record title holder's cousin purchased the property in the record title holder's name and the record title holder intentionally gave the record title holder's daughter's address instead of the record title holder's own address; the tax sale was valid in spite of the failure of the clerk to send notice of the tax sale to the record title holder's address, the tax deed properly vested title in the purchaser at the tax sale, the purchaser's subsequent quitclaim deed to the buyers was valid, all clouds upon the title to the property were removed and canceled, and the title to the property was properly vested in the buyers. Rush v. Wallace Rentals, LLC, 837 So. 2d 191 (Miss. 2003).

Where through oversight or inadvertence delinquent tax land is not advertised to be sold as required by this section [Code 1942, § 9921], the delinquent taxpayer has the right to pay the taxes without imposition of damages and penalties until after the regular sale day, and if he is still delinquent the board of supervisors is required to make a special order for its sale at a future date. Jackson v. Webster, 196 Miss. 778, 18 So. 2d 298 (1944).

Where through oversight or inadvertence delinquent tax land is not advertised to be sold on the regular date required by this section [Code 1942, § 9921], board of supervisors does not have authority to make a special order providing for its advertisement and sale at a subsequent date until after the regular sales date has passed, as authorized by Code 1942, §§ 9926 and 9928, and a special order of the board made before sale date providing for the advertisement and sale of land at a subsequent date, as well as the tax sale on that date, is void, even though the latter date is subsequent to that of the regular sale date. Jackson v. Webster, 196 Miss. 778, 18 So. 2d 298 (1944).

3.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

A description of land by lots is void where it appears that the map of the survey is not to be found in the chancery clerk's office or elsewhere nor whether the survey was a public or private one. Boone v. Wells, 91 Miss. 799, 45 So. 571 (1908).

7. Time of sale.

Order of supervisors made on first Monday of July, fixing Monday, first day of

August, as time for sale of property for taxes, was void under statute fixing first Monday of April and third Monday of September for sales for unpaid taxes. Smith v. Hendrix, 181 Miss. 229, 178 So. 819 (1938).

But statute held not to authorize supervisors to fix day for sale of land until the last day fixed by law has passed for sale of land upon which taxes have not been paid. Smith v. Hendrix, 181 Miss. 229, 178 So. 819 (1938).

A sale of land by tax collector for unpaid taxes on first Monday of March, as provided under a former similar statute, was valid, although another section provided that a tax collector should advertise all lands in his county on which taxes had not been paid on the first Monday of April following, since the requirements of the latter section were not necessary to be observed in order that the sale might be valid. Simpson v. Interstate Cooperage Co., 101 Miss. 312, 58 So. 4 (1912).

Under Code 1892, § 3811 if the taxes on land were unpaid after the fifteenth of January, the tax collector might advertise on the sixteenth or any succeeding day, provided only they were advertised for three weeks before the day of sale. Miller v. Delta & Pine Land Co., 74 Miss. 110, 20 So. 875 (1896).

8. Place of sale.

Under former law, a tax sale was not void though not made at the courthouse, where the courthouse had been destroyed and the board of supervisors had designated a building at the county seat as the courthouse and the place for such sales. Thayer v. Hartman, 78 Miss. 590, 29 So. 396 (1901).

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Any additional taxes due as a result of a change in assessment may be collected upon reasonable notice given to the taxpayer with an opportunity to appeal such a change in assessment. If the taxes are not paid, the land may be sold at a land sale as long as the procedures set forth in Section 27-41-55 are followed. Collier, August 23, 1995, A.G. Op. #95-0164.

The annual tax sale can be conducted at a temporary courthouse as designated by the board of supervisors. Artigues, Jr., May 31, 2002, A.G. Op. #02-0288.

The board of supervisors can designate an appropriate site for a temporary courthouse anywhere within the boundaries of the county seat. Artigues, Jr., May 31, 2002, A.G. Op. #02-0288.

A town may treat expenses for cleaning property either as a civil debt or as a lien on the property. A lien is to be treated exactly as a lien for delinquent taxes and thus remains viable through any foreclosure proceedings. In a sale to recover the lien amount, a town must follow the procedures for notice, time of sale, and the like pursuant to Miss. Code Ann. § 27-41-55 et seq. Maxey, March 2, 2007, A.G. Op. #07-00088, 2007 Miss. AG LEXIS 83.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 812 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 171 et seq. (enforcement of tax liability); Forms 211 et seq. (sale of property for nonpayment of taxes).

CJS. 85 C.J.S., Taxation § 1221 et seq.

§ 27-41-57. Sales of land for taxes; advertisement if no newspaper in county.

If there be no newspaper in the county, or if there be none the proprietor of which will undertake and make the publication for the compensation allowed by law, the tax collector shall post such advertisement and a list of said lands at some public place in each supervisor's district for said time, in addition to the list posted at the courthouse. If there be no newspaper published in the judicial district of the county where the land is located, or there be none the proprietor of which will undertake and make publication for the compensation allowed by law, advertisement may be made in some newspaper published in the county and having a circulation in said judicial district, in addition to the posting required.

SOURCES: Codes, 1942, § 9922; Laws, 1934, ch. 188.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.
7. Liability of tax collector.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

Defects in the advertisement do not affect the validity of the sale. Virden v. Bowers, 55 Miss. 1 (1877).

7. Liability of tax collector.

The tax collector who advertises the land, unless he by express contract make himself so, is not personally liable to the printer for the fees allowed by law if he go out of office and does not make the sales. The successor who makes the sales is liable. Moore v. Magee & Ware, 48 Miss. 567 (1873).

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 27-41-59. Sales of land for taxes; conduct of sale; online bidding and sale.

(1) Except as otherwise provided in Section 27-41-2, on the first Monday of April, if the tax collector has exercised his option to hold a tax sale on that day, and on the last Monday of August, as the case may be, if the taxes remain unpaid, the tax collector shall proceed to sell, for the payment of taxes then remaining due and unpaid, together with all fees, penalties and damages provided by law, the land or so much and such parts of the land of each delinquent taxpayer to the highest and best bidder for cash as will pay the amount of taxes due by him and all costs and charges. He shall first offer one hundred sixty (160) acres or a smaller separately described subdivision, if the land is less than one hundred sixty (160) acres. If the first parcel so offered does not produce the amount due, then he shall offer as an entirety all the land constituting one (1) tract. Each separate assessment as it appears and is described on the assessment roll shall constitute one (1) tract for the purpose of sale for taxes, notwithstanding the fact that the person who is the owner thereof, or to whom it is assessed, is the owner of or is assessed with other

lands, the whole of which constitutes one (1) entire tract but appears on the assessment roll in separate subdivisions. Upon offering the land of any delinquent taxpayer constituting one (1) tract, if no person will bid for it, the whole amount of taxes and all costs incident to the sale, the tax collector shall strike it off to the state. Except as otherwise provided in subsection (2) of this section, the sale shall be continued from day to day within the hours from 8:30 o'clock in the forenoon and 4:30 o'clock in the afternoon until completed.

(2) The tax collector is authorized to enter into an agreement with an online provider to conduct tax sales using online bidding and sale. Such agreement must be ratified by the county board of supervisors in order to be binding. Upon ratification of the agreement by the county board of supervisors, the tax collector may conduct the tax sale online as provided in this section. The time during which online bids can be made at a tax sale conducted under this subsection shall be established in the agreement and, if the tax sale is to be conducted using the procedure authorized by this subsection, the time during which online bids can be made at the sale shall be included in the advertisement required by Section 27-41-55. In counties having two (2) court districts, the online tax sale shall separate the court districts into two (2) separate portals to distinguish each district.

(3) A failure to advertise, an error in the advertisement, or an error in conducting the sale shall not invalidate a sale at the proper time and place for taxes of any land on which the taxes were due and not paid, but a sale made at the wrong time or at the wrong place shall be void. Any person sustaining damages by reason of any failure or error by the tax collector may recover damages therefor on his official bond.

SOURCES: Codes, 1942, § 9923; Laws, 1934, ch. 188; Laws, 1938, Ex. ch. 69; Laws, 1964, ch. 523; Laws, 1985, ch. 425, § 5; Laws, 1993, ch. 503, § 1; Laws, 1993, ch. 540, § 7; Laws, 1994, ch. 340, § 2; Laws, 2011, ch. 429, § 1; Laws, 2016, ch. 316, § 1, eff from and after July 1, 2016.

Editor's Note — Laws of 1993, ch. 540, § 11, effective October 1, 1993, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

A former subsection (2) [Laws, 2011, ch. 429, § 11, effective from and after July 1, 2011; Repealed by its own terms, effective September 1, 2013] provided that property in a public improvement district that failed to receive a bid and was struck off to the state under this section could, under certain circumstances, be offered for sale for a second time.

Amendment Notes — The 2016 amendment divided former (1) into present (1) and (3) by substituting a period for "but neither" at the end of what is now (1), and substituting "A failure to advertise, an error in the advertisement, or an error in conducting the sale shall not invalidate" for "a failure to advertise, nor error in the advertisement, nor error in conducting the sale, shall invalidate" at the beginning of what is now the first sentence of (3); added the exception at the beginning of the last sentence of (1); and added (2).

Cross References — Municipality's purchase of lands at tax sale, see §§ 21-33-69, 21-33-73.

Bidding on land by Commissioner of Revenue, see § 27-3-43.

Conveyance to individual purchasers at tax sale, see § 27-45-23.

Rights of purchaser at tax sale, see § 27-45-27.

Presumption of lost grant as to lands sold to state for delinquent taxes, see § 29-1-113.

Sale of delinquent tax lands to drainage district, see § 51-31-131.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. Validity.
2. Construction and application, in general.
3. Place of sale.
4. Date of sale, or of filing report.
5. —Sale after payment or tender of taxes.
6. Sale by parcels or as one tract or unit.
7. —As affected by manner of assessment of separate tracts.
8. Adequacy of sale price.

9.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. In general.
12. Date of sale, or of filing report.
13. —Sale after payment or tender of taxes.
14. Sale by parcels or as one tract or unit.
15. —As affected by manner of assessment of separate tracts.
16. Adequacy of sale price; assessment valuation.

I. UNDER CURRENT LAW.

1. Validity.

The legislature has the power to provide the mode and manner of tax sales and to indicate clearly its will. Beard v. Stanley, 218 Miss. 192, 67 So. 2d 263 (1953).

In absence of constitutional limitation, any defect, irregularity, or illegality in proceedings, resulting in tax sale, which might have been dispensed with by prior statute, may be dispensed with by subsequent statute; provided there has not been a total departure from statutory method governing sales. Russell Inv. Corp. v. Russell, 182 Miss. 385, 182 So. 102 (1938).

In view of § 79 Const. 1890 a statute providing for the sale of property for nonpayment of taxes is not void because it fails to provide for the redemption of the property. State ex rel. Knox v. Gulf, M. & N.R.R., 138 Miss. 70, 104 So. 689 (1925).

2. Construction and application, in general.

The recitation in a tax collector's certificate to the list of land sold for taxes, that he sold the lands "according to law" raised a rebuttable presumption that the collector had performed his duty as required by law. Parker v. Touliatos, 244 So. 2d 7 (Miss. 1971).

In an action to remove a tax sale as a cloud upon the landowner's title, the chancellor properly admitted the testimony of a tax collector concerning the manner in which the tax sale was conducted, and the testimony was not inadmissible on the theory that it violated the rule that an officer may not impeach his official acts, even though the collector's testimony invalidated the sale, where the testimony did not contradict any fact recited on the record of the sale. Parker v. Touliatos, 244 So. 2d 7 (Miss. 1971).

Even if a tax deed had been defective or void for failure to advertise the tax sale or to give the land owner notice as to redemption, it would still have operated as color of title and formed a sufficient basis upon which adverse possession would ripen into title, and since defendants had admittedly deprived the complainant of possession of land for considerably more than ten years prior to the complainant's action for confirmation of his title, the complainant could not prevail. Trotter v. Roper, 229 Miss. 784, 92 So. 2d 230 (1957).

Tax sale to state and patent issued pursuant thereto were void, where assessor of Jasper County failed to comply with Laws 1906, ch. 168, § 12, requiring him to file copies of the land and personal assessment rolls of the county at each of the county seats of the two districts comprising the county. McFarland v. Masonite Corp., 209 Miss. 121, 46 So. 2d 84 (1950).

Decree cancelling tax sale and directing personal judgment against owner of land sold is void and of no effect when rendered on bill alleging no facts showing tax sale to be invalid but alleging in effect valid tax sale, which operated as extinguishment of personal liability of owner. State v. Rogers, 206 Miss. 643, 39 So. 2d 533 (1949).

Attempted assessment of property owned by municipality on January 1, 1937 for state and county taxes for 1937 is void for reason that property was exempt from taxation, and sale for unpaid taxes on third Monday of September 1938 is void sale. Tardo v. Sterling, 205 Miss. 439, 38 So. 2d 911 (1949), error overruled 205 Miss. 439, 39 So. 2d 504.

Sale of land to state on October 9, 1933, for 1932 taxes, was void where the order of the board of supervisors fixing October 9, 1933 as the date of sale, was entered on September 6, 1933, prior to expiration of the time allowed taxpayer to pay his taxes without the imposition of damages and penalty, and which time did not end until after the regular sale day on the third Monday of September of such year. Merchants & Mfrs. Bank v. State, 200 Miss. 291, 25 So. 2d 585 (1946).

Requirements of former similar section (Code 1930, § 3249) were enacted for the benefit of the owner of the land, to the end that only such part of his property shall be sold as may be necessary to realize the whole amount of the taxes and costs due on the entire tract. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

3. Place of sale.

Tax sale to be valid must be held at the place provided by law. Collins v. Wright, 197 Miss. 695, 20 So. 2d 837 (1945).

Where old courthouse burned and sheriff and board of supervisors designated another building as temporary courthouse, tax sale could be validly held only at the door of the temporary courthouse, and tax sale held in front of concrete steps at ruins of old courthouse, which was not visible from temporary courthouse, was void. Collins v. Wright, 197 Miss. 695, 20 So. 2d 837 (1945).

4. Date of sale, or of filing report.

Tax sale of land to state on September 4, 1932 in violation of statute, Laws of 1932, Ex. Sess., ch. 383, § 9, requiring tax sale of land to be made on first Monday of April or third Monday of September of that year, was void. Ellard v. Logan, 39 So. 2d 485 (Miss. 1949).

There is no distinction between first Monday of April and third Monday of September as to being proper days to sell lands for unpaid taxes; tax collector has full authority on third Monday of September to advertise and sell any lands on which taxes are unpaid, regardless of whether land could have been lawfully advertised and sold on first Monday of April. Tardo v. Sterling, 205 Miss. 439, 38 So. 2d 911 (1949), error overruled 205 Miss. 439, 39 So. 2d 504.

5. —Sale after payment or tender of taxes.

Tax sale was not void on ground of prior tender of taxes, where such alleged tender was merely a general request of tax collector by owner to send a statement of taxes owing on lands deeded to such owner by a specified grantor, without any description of the lands in question. Entrekin v. Tide Water Associated Oil Co., 203 Miss. 767, 35 So. 2d 305 (1948).

6. Sale by parcels or as one tract or unit.

In an action to cancel as a cloud on title a sale of property to the state in 1948 for 1947 taxes on minerals, the chancellor properly overruled the state's demurrer where the demurrer admitted the complainant's allegation that the 1948 tax sale had been invalid for failure to comply with the predecessor statute of § 27-41-59 requiring that the tax collector first offer the property in 40-acre tracts. In addition, where the demurrer admitted the allegation that the state had not been in possession of the property since the tax sale, the chancellor properly overruled the special demurrer that the action was barred by the limitations in §§ 15-1-7, 15-1-9, and 15-1-17 since possession is required to start any of the three statutes into operation. Pittman v. Currie, 391 So. 2d 654 (Miss. 1980).

Where two widely separated tracts did not appear on the assessment roll as a unit, they may not be lumped together on a sale for taxes. State v. Gardner, 236 Miss. 768, 112 So. 2d 362 (1959).

Where a statute provided that each separate assessment as it appears on roll should constitute one tract for purpose of sale for taxes, notwithstanding fact that the person who was owner thereof, or to whom it was assessed, was the owner of or was assessed with other lands, this statute [Code 1942, § 9923] authorized the sale as a unit of two separate parcels which were not contiguous, when they were assessed to the same owner. Beard v. Stanley, 218 Miss. 192, 67 So. 2d 263 (1953).

The 1938 amendment (Laws, 1938, Ex. ch. 69, this section), to Code 1930, § 3249, has no retroactive effect to validate tax sales of different parcels of one contiguous tract owned by the same owner which were invalid under Code 1930, § 3249, as it stood prior to 1938 amendment. Leavenworth v. Claughton, 197 Miss. 606, 19 So. 2d 815 (1944), suggestion of error overruled, 197 Miss. 606, 20 So. 2d 821 (1945).

In action to set aside a sale of land for delinquent drainage taxes, burden was on complainant to show that the lands were not first offered in parcels not exceeding 40 acres as required by law. Jones v. Seward, 196 Miss. 446, 16 So. 2d 619 (1944).

Report of sale of land for delinquent drainage taxes, showing that land was sold in parcels larger than 40 acres, but silent as to how the lands were offered for sale, although stating that the sale was made “pursuant to law,” did not aid complainant’s burden of proving allegation that tax collector did not first offer the lands in parcels not exceeding 40 acres. Jones v. Seward, 196 Miss. 446, 16 So. 2d 619 (1944).

The law does not require the lands to be sold in parcels not exceeding 40 acres, but only requires that they be thus first offered. Jones v. Seward, 196 Miss. 446, 16 So. 2d 619 (1944).

This section [Code 1942, § 9923] requires that land, sold for taxes, must be offered for sale in 40 acre blocks, regardless of whether each separate assessment is considered as a separate tract for the purposes of sale for taxes, and is applicable to sales of land for delinquent drainage taxes. Jones v. Seward, 194 Miss. 763, 12 So. 2d 132 (1943).

7. —As affected by manner of assessment of separate tracts.

Separate tax sales of land as separate tracts although constituting one tract are valid, where the land appeared on the assessment roll in separate subdivisions. State v. Rogers, 206 Miss. 643, 39 So. 2d 533 (1949).

Where lands or interests therein of separate owners are separately assessed, they must be separately sold as assessed, and failure to do so renders the tax sale void. Chapman v. McCullen, 197 Miss. 454, 22 So. 2d 161 (1945).

8. Adequacy of sale price.

Where tax sale of land to state is void, it is immaterial in a suit to cancel forfeited land tax patent as a cloud on the title that the patent was obtained from the state in good faith for a fair price. Ellard v. Logan, 39 So. 2d 485 (Miss. 1949).

9.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. In general.

Statute providing that sale of land for taxes conveys perfect title to purchaser held qualified by other provisions creating lien. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

Statute providing that sale of land for taxes conveys perfect title to purchaser held to convey title in fee simple except in so far as title is qualified by other provisions creating lien. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

Purchaser of land at tax sale does not receive land free from lien of drainage assessments thereon. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

Where tax collector had listed delinquent real property but had not delivered list to printer, taxpayer was liable for ten per cent penalty. Reed v. State, 155 Miss. 512, 124 So. 497 (1929).

A tax deed not filed on or before the first day of April, 1908, held void. Howie v. Alford, 100 Miss. 485, 56 So. 797 (1911).

The assessment in solido of two tracts of land owned by different parties to an unknown owner is not invalid. Moores v. Thomas, 95 Miss. 644, 48 So. 1025 (1909).

The state can waive its protection given it by the statute of limitations in favor of the holders of levy tax titles and a subsequent purchaser from the state cannot invoke the statutes so waived. McLemore v. Anderson, 92 Miss. 42, 43 So. 878 (1907), aff'd, 92 Miss. 65, 47 So. 801 (1908).

A sale for taxes is not invalidated because the purchaser is the wife of the collector conducting the sale, in the absence of any irregularity or fraud. Means v. Haley, 86 Miss. 557, 38 So. 506 (1905).

12. Date of sale, or of filing report.

This section [Code 1942, § 9923], as formerly enacted (Code 1930, § 3249), by virtue of Code 1930, § 2585 (now Code 1942, § 3749), did not apply to a tax sale under a municipal ordinance setting a different time for such sale in view of Code 1930 § 2623, (now Code 1942, § 3785), under which the ordinance controlled and not this section [Code 1942, § 9923]. Lear v. Hendrix, 186 Miss. 289, 187 So. 746 (1939).

Statute held not to authorize supervisors to fix day for sale of land until the last day fixed by law has passed for sale of land upon which taxes have not been paid. Smith v. Hendrix, 181 Miss. 229, 178 So. 819 (1938).

Order of supervisors made on first Monday of July, fixing Monday, first day of August, as time for sale of property for taxes, was void under statute fixing first Monday of April and third Monday of September for sales for unpaid taxes. Smith v. Hendrix, 181 Miss. 229, 178 So. 819 (1938).

Tax deed executed by chancery clerk showing on its face that land conveyed had not been sold at time required by statute held invalid, notwithstanding statutory provision that tax collector's deed should be prima facie evidence of validity of sale. Bailey v. McRae, 176 Miss. 557, 169 So. 887 (1936).

However, a deed dated the day after the day fixed by law for the sale of delinquent tax lands is not for that reason invalid and proof that the sale was continued may be given by parol. Standard Drug Co. v. Pierce, 111 Miss. 354, 71 So. 577 (1916).

Where a statute provided that at tax sales the collector should strike off unsold lands to the state and that on or before the first Monday of April "thereafter" he should transmit to the land commissioner a certified list of such lands, and the legislature changed the date of tax sales from the first Monday in March to the first Monday in April, without amending the provision relating to striking off unsold lands to the state, the report of a sale held in April, the actual sale being made after the first Monday, and filed before the first Monday of the following April, was valid. H. Weston Lumber Co. v. Durham, 109 Miss. 362, 69 So. 177 (1915).

A sale for taxes made on the first Monday in March, 1907, held, under previous similar enactment, to be good. Hyman Mercantile Co. v. Summit Saw & Planing Mill Co., 103 Miss. 848, 60 So. 1015 (1913); Webb v. Mobile & O.R.R., 105 Miss. 175, 62 So. 168 (1913).

A sale of land by tax collector for unpaid taxes on first Monday of March, as provided under a former enactment of this section [Code 1942, § 9923], was valid, although another section provided that a tax collector should advertise all lands in his county on which taxes had not been paid on the first Monday of April following, since the requirements of the latter section were not necessary to be observed in order that the sale might be valid. Simpson v. Interstate Cooperage Co., 101 Miss. 312, 58 So. 4 (1912).

Mere proof of an earlier sale of land for taxes is not sufficient to show that the date in the auditor's deed is a misrecital. McLemore v. Anderson, 92 Miss. 42, 43 So. 878 (1907), aff'd, 92 Miss. 65, 47 So. 801 (1908).

Where the state actually had a title under any sale for taxes the auditor's deed will convey such title to the purchaser regardless of a misrecital in the deed as to the real date of sale. McLemore v. Anderson, 92 Miss. 42, 43 So. 878 (1907), aff'd, 92 Miss. 65, 47 So. 801 (1908).

The fact that two years prior to a tax sale the purchaser at the tax sale had purchased the same lands at an execution sale did not render the tax sale invalid, where it appeared that the execution sale had been set aside and vacated by the court from which it issued. Thayer v. Hartman, 78 Miss. 590, 29 So. 396 (1901).

A sale for taxes which does not occur on the day fixed by the statute or on a day to which the sale is continued conveys no title. Byrd v. McDonald, 28 So. 847 (Miss. 1900).

13. —Sale after payment or tender of taxes.

However, bill offering to redeem land by payment of state and county taxes held demurrable where bill did not offer to pay drainage assessments. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

Where land is assessed twice and paid on under one sufficient assessment a sale of the land under the other assessment is void. Austin v. Sullivan, 135 Miss. 741, 100 So. 275 (1924).

Where the owner tenders the full amount of taxes due on his land and the tax collector informs him that the taxes are already paid and gives him a written list of the lands showing the taxes thereon are paid, a sale for such taxes is void. Brannon v. Lyon, 86 Miss. 401, 38 So. 609 (1905).

A tax sale made after the taxes have been paid is void. Perret v. Borries, 78 Miss. 934, 30 So. 59 (1901).

14. Sale by parcels or as one tract or unit.

Tax collector's list, which is equally capable of interpretation that he made two sales of adjoining tracts of land separately assessed or that he made only one sale, presents self-contained latent ambiguity, and testimony of two private persons who were bidders at sale is admissible to show two sales of land were made. Claughton v. Leavenworth, 204 Miss. 595, 37 So. 2d 776 (1948).

A presumption that several tracts sold to the state were offered and sold separately was overcome and the sale was deemed void under this section [Code 1942, § 9923] as previously written (Code 1930, § 3249), where, although each tract was separately described each time in the notice of sale and in the list of lands sold, there was no special separate calculation of the state tax, the county tax and the damages as to the several tracts, but only a total calculation based upon the sum of all of the values of all of the parcels together and a total of all the taxes and all of the damages calculated on the unification of the several parcels. Slush v. Patterson, 201 Miss. 113, 28 So. 2d 738 (1947), error overruled, 201 Miss. 131, 29 So. 2d 311 (1947).

Where the proof made by the list and the certificate did not show that there was more than one sale to the state of contiguous tracts assessed to one owner, and there was no affirmative evidence to show that more than one sale was made, the presumption is that the land was sold in an entirety as one sale. Barron v. Eason, 199 Miss. 739, 25 So. 2d 188 (1946).

Presumption arises that tax collector, in striking off land to the state at tax sale, properly offered the land for sale as required by Code 1930, §§ 3249 and 3256, in the absence of evidence on the list of land sold to the state for taxes or other proof to the contrary. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Where it does not affirmatively appear on the face of the list of land sold to the state for taxes as provided by Code 1930, § 3256 (repealed by Laws, 1934, ch. 188), that the lands were not first offered to individuals in the manner required by Code 1930, § 3249, or that all of the lands comprising the tract and described in such list, even though listed as separate parcels, were not thereafter struck off to the state as one sale for the several sums, listed as total taxes and costs against each separate parcel, the presumption prevails that they were first offered to individuals and later struck off to the state as one sale. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Failure to group together in one description on the list of land sold to the state for taxes as required by Code 1930, § 3256, five separately assessed parcels comprising one tract, does not raise presumption that they were not offered for sale and sold in five separate sales as required by Code 1930, § 3249, so as to render the tax sale void, in the absence of other circumstances showing that more than one sale was made. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Evidence consisting of township maps showing that five parcels of land comprised one tract, and certified list of land sold to the state, as transmitted by the tax collected to the chancery clerk, disclosing the total of all taxes and costs assessed or claimed against each parcel, and that the sales of different lands assessed to other owners and comprising a single tract were made a part of such tract on two different days, was insufficient to overcome presumption that the tract was validly sold to the state. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

If tax collector struck off in consecutive order several separate parcels as one sale to the state for the several amounts of taxes and the incident costs collector's failure to note as one total sum what the several amounts of taxes and costs would make in the aggregate by simple addition would not vitiate the sale, where his list furnished all of the data required by the statute to show "the amount of taxes for which the sale was made" and "each item of costs incident thereto." State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Separate tax sales in 1932 of part of one contiguous tract were void under Code 1930, § 3249, although the tract was separately assessed in part. Love v. Barron, 197 Miss. 231, 20 So. 2d 97 (1944), error overruled, 197 Miss. 236, 20 So. 2d 841 (1945).

Separate tax sales of two different parcels, which were separately assessed, of one contiguous tract owned by the same owner, were invalid under Code 1930, § 3249, as it stood prior to the 1938 Amendment (Laws, 1938, Ex. ch. 69). Leavenworth v. Claughton, 197 Miss. 606, 19 So. 2d 815 (1944), suggestion of error overruled, 197 Miss. 606, 20 So. 2d 821 (1945).

Previous similar section (Code 1930, § 3249) required the tax collector in selling the land of a delinquent taxpayer to offer them in the manner therein provided, and a failure so to do rendered the sale void. Cox v. Richerson, 186 Miss. 576, 191 So. 99, 124 A.L.R. 1138 (1939).

Under previous similar section (Code 1930, § 3249) oral evidence was inadmissible on behalf of the tax purchaser, in a suit to cancel a tax deed, to show that the lands of the delinquent taxpayers were actually offered and sold in the manner and order prescribed by the statute in that regard but different from that recited by the tax deed. Cox v. Richerson, 186 Miss. 576, 191 So. 99, 124 A.L.R. 1138 (1939).

A tax sale whereby three separate tracts of contiguous land of a taxpayer were sold separately for the tax assessed separately as to each tract and not for all the taxes due by the delinquent taxpayer was void under a previous similar section (Code 1930, § 3249), since the statute intended that the land of the delinquent taxpayer should be offered in the manner pointed out in subdivisions of 40 acres for the whole tax due by the delinquent taxpayer, and did not contemplate selling the land only for the taxes accruing on the particular part of the land on which the delinquent tax was impressed. Cox v. Richerson, 186 Miss. 576, 191 So. 99, 124 A.L.R. 1138 (1939).

Tax sales in 1921 and 1930 of a single tract of land, lying in two sections, were void where at such times two tax deeds were given to the purchasers indicating two separate and distinct sales in violation of a previous enactment of this section (Code 1930, § 3249), requiring one sale for the amount of taxes due on an entire tract, notwithstanding that the deeds were in statutory form and recited the sales as being "according to law", although a different question might arise if there had been only one sale complying with the statute and two deeds to the purchaser. Carter v. Moore, 183 Miss. 112, 183 So. 512 (1938).

Tax collector's testimony that he probably sold lands in solido held insufficient to overthrow prima facie case made by tax deed. Neal v. Shepard, 157 Miss. 730, 128 So. 69 (1930), error overruled, 128 So. 583 (Miss. 1930).

That it would be difficult for sheriff to divide land into forty-acre tracts on sale for delinquent taxes does not relieve him of duty of complying with statute. Talmadge v. Seward, 155 Miss. 580, 124 So. 791 (1929).

In the sale of 100 acres of land assessed to owner "unknown" the tax collector failed to comply with the provisions to offer said land in subdivisions, and the deed was invalid. Womack v. Central Lumber Co., 131 Miss. 201, 94 So. 2 (1922).

Under prior similar enactment of this section [Code 1942, § 9923], requiring land sold for taxes to be offered in forty-acre tracts, a sale of an undivided half interest in eighty acres was illegal. Stevenson v. Reed, 90 Miss. 341, 43 So. 433 (1907).

A sale for taxes of a seventy-two-acre tract of land without first offering forty acres and afterward adding the balance, is void. Howell v. Shannon, 80 Miss. 598, 31 So. 965, 92 Am. St. R. 609 (1902).

It is the duty of the tax collector under this section [Code 1942, § 9923] to add each subdivision of forty acres to the aggregate of subdivisions already offered and not each independent of the others. A sale of land containing several legal subdivisions of forty acres each is void when the collector fails to designate the several subdivisions by their descriptions. Nelson v. Abernethy, 74 Miss. 164, 21 So. 150 (1896).

A sale void for the above reason is not cured by the provision in this section [Code 1942, § 9923] that no error in conducting the sale shall invalidate it, nor by the provisions of Code 1942, § 9958. Nelson v. Abernethy, 74 Miss. 164, 21 So. 150 (1896).

A sale in a body of a 300-acre tract instead of by offering it in forty-acre parcels vitiated the sale, although the section being fractional and its boundaries irregular had not been and could not be divided into equal subdivisions by governmental survey. Herring v. Moses, 71 Miss. 620, 14 So. 437 (1894).

A sale by offering forty acres at a time was feasible and under Code 1892, § 3776 (Code 1942, § 9775), would have passed an undivided interest in the whole equal to the proportion which the number of acres sold bore to the whole tract. Herring v. Moses, 71 Miss. 620, 14 So. 437 (1894).

15. —As affected by manner of assessment of separate tracts.

However, previous similar section (Code 1930, § 3249), did not apply to the sale of city lots, since a different scheme was provided for the sale of city lots than that provided for in regard to the sale of acreaged lands, and so sale of two separately assessed city lots was not void because, although the lots were contiguous and belonged to the same owner, the sale was not made by first offering one lot for sale, and then both as an entirety. Belhaven Heights Co. v. May, 187 Miss. 101, 192 So. 6 (1939).

The joint assessment of two tracts of land owned by different persons and entirely separated by a third tract is irregular, but failure to object thereto until after tax sale precludes a person from questioning the validity of the assessment after such sale. Jones v. Moore, 118 Miss. 68, 79 So. 3 (1918).

The words "contiguous tracts" mean tracts in actual or close contact to; adjacent or near each other and where the land assessed corners it may be assessed and sold as one tract. Wilkerson v. Harrington, 115 Miss. 637, 76 So. 563 (1917).

A tax sale in lump of several distinct and separate tracts assessed at different sums and for different owners was void. Morris v. Myer, 87 Miss. 701, 40 So. 231 (1906).

Where several lots of land separated from each other and all of different values are assessed together at an aggregate valuation and the taxes on some of them are paid the tax collector cannot change the assessment to exclude the lots paid upon deducting from the aggregate valuation a part proportionate to the whole as the number of lots paid upon are to the entire number. A sale for taxes after such a change of the assessment by the collector is void. Speed v. McKnight, 76 Miss. 723, 25 So. 872 (1899).

Where land is assessed in part to a designated owner and in part to an unknown owner, a tax sale of the whole as one tract is void under prior similar enactment of this section [Code 1942, § 9923], such section requiring each tract separately assessed to be separately sold. Higdon v. Salter, 76 Miss. 766, 25 So. 864 (1899).

Under previous similar enactment of this section [Code 1942, § 9923] a deed based on an assessment to "unknown owner" which described the land as "west part of § 7, township 7, range 2, containing 300 acres more or less" was not rendered void for uncertainty by proof that the 300 acres when laid off embraces several small tracts separately assessed, the taxes on which were paid. The sale passed title to the 300 acres less the tracts separately assessed and paid on. Herring v. Moses, 71 Miss. 620, 14 So. 437 (1894).

16. Adequacy of sale price; assessment valuation.

Fees for tax deed were not "costs of tax sale," and failure of bid to cover such fees did not invalidate sale. Crorow Hardwood Co. v. Moye, 161 Miss. 642, 137 So. 493 (1931).

Tax collector may not sell delinquent lands to person bidding less than taxes and costs; tax deed undertaking to convey to purchaser bidding less than taxes and costs held void; statute requiring tax collector to strike off delinquent lands to state if no one bids whole amount of taxes and costs held mandatory; violation of statute requiring tax collector on failure of any one to bid whole amount of taxes and costs to strike off land to state held not cured by other statutes. Yazoo-Delta Mtg. Co. v. Lumbley, 149 Miss. 864, 116 So. 95 (1928).

The tax collector is without authority to sell mill property worth several thousand dollars for delinquent tax of only $54, but is only required to sell such part as is necessary to bring the taxes. Stuard v. Southern Engine & Boiler Works, 100 Miss. 895, 57 So. 218 (1911).

The failure of the tax assessor to fix the values of property for taxation at proper amounts does not void the assessment. North v. Culpepper, 97 Miss. 730, 53 So. 419 (1910).

ATTORNEY GENERAL OPINIONS

A minimum overbid cannot be set at county tax sales. Garner, Sept. 21, 2001, A.G. Op. #01-0590.

When parcels of land were sold in 2001 for 2000 and 1999 delinquent taxes, the delinquent taxes should have been combined and each parcel sold only to one purchaser for the combined amount of delinquent taxes advertised; at the 2001 tax sale, the parcels of land should not have been sold to different buyers, but to the highest and best bidder for all of the taxes due. The board of supervisors may declare the sales to different purchasers void and order a refund to the tax purchasers, and the parcels resold. Barry, Feb. 9, 2004, A.G. Op. 03-0680.

There is no authority for a county to pay delinquent land taxes or to bid on or purchase real property at a county tax sale. Hudson, February 9, 2007, A.G. Op. #07-00038, 2007 Miss. AG LEXIS 19.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 841 et seq.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 237 (allegation of complaint, petition, or declaration that sale of property was on unauthorized date); Form 238 (allegation of complaint, petition, or declaration that there was a sale of more property than necessary to satisfy tax debt).

19 Am. Jur. Pl & Pr Forms (1st ed), Taxation, Form 19:518 (petition to restrain execution and delivery of tax deed or to cancel same for sale on other than legal sales day).

19 Am. Jur. Pl & Pr Forms (1st ed), Taxation, Form 19:522 (allegation of invalidity of tax sale because of failure to comply with statutory mandate to sell only portion of entire tract).

CJS. 85 C.J.S., Taxation § 1292 et seq.

§ 27-41-61. Sales of land for taxes; sale of city or town lots.

Land in cities, towns, or villages shall be sold by lots or other subdivisions or descriptions by which it is assessed; and it shall not be necessary to offer less than a lot, but it shall not be an objection that less than a lot was sold if it bring enough to pay the taxes for which it is sold.

SOURCES: Codes, 1942, § 9924; Laws, 1934, ch. 188.

Cross References — Sale of lands for nonpayment of municipal taxes, see §§ 21-33-63 through 21-33-69.

How state lands in municipalities may be sold, see § 29-1-67.

JUDICIAL DECISIONS

1. In general.

Separate tax sales of two or more lots assessed as an entirety at a single valuation impart no title to the purchaser and a tax collector's deeds to lots so sold are void. House v. Gumble, 78 Miss. 259, 29 So. 71 (1900).

§ 27-41-63. Sales of land for taxes; penalty for sale of land after taxes received.

If a tax collector sells any land after he shall have received the taxes due thereon, he shall refund to the purchaser the money paid and such sale shall be void.

SOURCES: Codes, 1942, § 9925; Laws, 1934, ch. 188; Laws, 1995, ch. 468, § 10, eff from and after passage (approved March 27, 1995).

JUDICIAL DECISIONS

1. In general.

This section [Codes 1942, § 9925] gives relief only to the owner and the immediate tax purchaser, so that a remote purchaser cannot recover thereunder on the tax collector's bond, even though he purchased the land from the immediate tax purchaser in good faith. State, ex rel. Boyle v. Matthews, 196 Miss. 833, 18 So. 2d 156 (1944).

Tax collector, in making out and filing a certified list of lands sold for taxes, is performing a duty solely for the public, and only the owners whose lands are sold and the immediate purchasers thereof have any special interest therein apart from the public generally; and, therefore, a remote tax purchaser who examined such list and relied thereon in purchasing from the immediate tax purchaser could not recover on the tax collector's bond for the amount paid for the property and for improvements thereon because taxes had in fact been paid by the owner. State, ex rel. Boyle v. Matthews, 196 Miss. 833, 18 So. 2d 156 (1944).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 859.

CJS. 85 C.J.S., Taxation § 1335.

§ 27-41-65. Sales of land for taxes; sale of land not sold at regular time.

If from any cause a sale of any land for taxes which is liable to such sale shall not be made at the time appointed by law for such sale, it may be sold thereafter, in the same or a subsequent year, at any time designated therefor by order of the board of supervisors. Notice of a sale so ordered shall be given by advertising it in the manner prescribed by law for the sale of land for taxes; and the same shall be made at the same place and subject to all the provisions of law applicable to such sales at the time appointed by law. Lists of lands sold to the state and to individuals shall be filed in the office of the clerk of the chancery court within the same relative period of time after the sale as is allowed for filing such lists after sales at the regular time, and the clerk shall at once record them; and such lists shall be as valid and have the same effect and be subject to all the provisions of law applicable to such lists made of lands sold at the regular sale for taxes.

SOURCES: Codes, 1942, § 9926; Laws, 1934, ch. 188; Laws, 1936, ch. 150.

Cross References — Sale of land not sold for municipal taxes at appointed time, see § 21-33-65.

Second sale of certain property to be conducted in the manner prescribed under this section, see § 27-41-59.

Supplementary method of sale at time other than regular time, see § 27-41-67.

Postponement of sales because of emergency, see § 27-41-69.

JUDICIAL DECISIONS

1. In general.

Tax title held valid where sale was ordered by board of supervisors to be held on first Monday of June, which was June 1st, and published notice carried this date, although sheriff's certificate and printed columns of the rolls which provide for the dates of sales mistakenly bore date of sale as Monday, June 6th, since sheriff's compliance with order and notice is presumed. Pinkerton v. Busby, 42 So. 2d 126 (Miss. 1949), error overruled, 42 So. 2d 387 (Miss. 1949).

Tax sale of land made under order of board of supervisors is valid under this section [Code 1942, § 9926] when for any cause it is not made at required time. State v. Rogers, 206 Miss. 643, 39 So. 2d 533 (1949).

The board of supervisors cannot fix a time subsequent to the regular time for tax sale until after the regular date has expired. Hooper v. Walker, 201 Miss. 158, 29 So. 2d 72 (1947).

A tax sale held on a date after the regular time for such sales, which date was fixed by the board of supervisors by action taken before arrival of the regular time, was void. Hooper v. Walker, 201 Miss. 158, 29 So. 2d 72 (1947).

Authority of board of supervisors to order sale of delinquent tax lands is limited strictly to that conferred by statute. Jackson v. Webster, 196 Miss. 778, 18 So. 2d 298 (1944).

Where through oversight or inadvertence delinquent tax land is not advertised to be sold as required by Code 1942, § 9921, the delinquent taxpayer has the right to pay the taxes without imposition of damages and penalties until after the regular sale day, and if he is still delinquent the county board of supervisors is required to make a special order for its sale at a future date. Jackson v. Webster, 196 Miss. 778, 18 So. 2d 298 (1944).

Where through oversight or inadvertence delinquent tax land is not advertised to be sold on the regular date required by Code 1942, § 9921, county board of supervisors does not have authority to make a special order providing for its advertisement and sale at a subsequent date until after the regular sales date has passed, as authorized by this section [Code 1942, § 9926] and Code 1942, § 9928, and a special order of the board made before sale date providing for the advertisement and sale of land at a subsequent date, as well as the tax sale on that date, is void, even though the latter date is subsequent to that of the regular sale date. Jackson v. Webster, 196 Miss. 778, 18 So. 2d 298 (1944).

§ 27-41-67. Sales of land for taxes; sale of land not sold at regular time; supplementary method.

If from inadvertence or oversight a sale of any land for taxes which is liable to such sale shall not be made at the regular time appointed by law for such sale, it may be sold thereafter at any time designated therefor by an order of the board of supervisors, which order need not describe the land to be sold nor give the names of the owners of the land to be sold. Notice of a sale so ordered shall be given by advertising it in the manner prescribed by law for the sale of land for taxes; and the same shall be made at the same place and subject to all the provisions of law applicable to such sales at the time appointed by law. Lists of lands sold to the state and to individuals shall be filed in the office of the clerk of the chancery court within the same relative period of time after the sale as is allowed for filing such lists after sales at the regular time, and the clerk shall at once record them; and such lists shall be as valid and have the same effect and be subject to all the provisions of law applicable to such lists made of lands sold at the regular sale for taxes. This section shall not be construed as giving the tax collector any discretion to postpone the sale of lands from the time appointed by law for such sales.

SOURCES: Codes, 1880, § 558; 1892, § 3850; 1906, § 4367; Hemingway's 1917, § 7006; 1930, § 3252; 1942, § 9928; Laws, 1902, ch. 67 (4); Laws, 1934, ch. 195.

Cross References — Another method of sale at time other than regular time, see § 27-41-65.

Postponement of sales because of emergency, see § 27-41-69.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.
2. Notice.
3. Time of sale.

4.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.
7. Time of sale.

8. Order for sale.

I. UNDER CURRENT LAW.

1. In general.

The order of board for the sale of land for taxes need not describe the land, but is sufficient if it definitely fixes the date for the sale and recites that no sales of land were made for delinquent taxes at the regular time fixed by law. Harlan v. Martin, 200 Miss. 667, 27 So. 2d 725 (1946).

Authority of board of supervisors to order sale of delinquent tax lands is limited strictly to that conferred by statute. Jackson v. Webster, 196 Miss. 778, 18 So. 2d 298 (1944).

2. Notice.

Where through oversight or inadvertence delinquent tax land is not advertised to be sold as required by Code 1942, § 9921, the delinquent taxpayer has the right to pay the taxes without imposition of damages and penalties until after the regular sale day, and if he is still delinquent board of supervisors is required to make a special order for its sale at a future date. Jackson v. Webster, 196 Miss. 778, 18 So. 2d 298 (1944).

Where through oversight or inadvertence delinquent tax land is not advertised to be sold on the regular date required by Code 1942, § 9921, board of supervisors does not have authority to make a special order providing for its advertisement and sale at a subsequent date until after the regular sales date has passed, as authorized by this section [Code 1942, § 9928] and Code 1942, § 9926, and a special order of the board made before sale date providing for the advertisement and sale of land at a subsequent date, as well as the tax sale on that date, is void, even though the latter date is subsequent to that of the regular sale date. Jackson v. Webster, 196 Miss. 778, 18 So. 2d 298 (1944).

3. Time of sale.

Tax title held valid where sale was ordered by board of supervisors to be held on first Monday of June, which was June 1st, and published notice carried this date, although sheriff's certificate and printed columns of rolls which provide for the dates of sales mistakenly bore date of sale as Monday, June 6th, since sheriff's compliance with order and notice is presumed. Pinkerton v. Busby, 42 So. 2d 126 (Miss. 1949), error overruled, 42 So. 2d 387 (Miss. 1949).

The board of supervisors cannot fix a time subsequent to the regular time for tax sale until after the regular date has expired. Hooper v. Walker, 201 Miss. 158, 29 So. 2d 72 (1947).

A tax sale held on a date after the regular time for such sales, which date was fixed by the board of supervisors by action taken before arrival of the regular time, was void. Hooper v. Walker, 201 Miss. 158, 29 So. 2d 72 (1947).

Sale of land for drainage taxes, delinquent for a prior year, made by the tax collector on the first Monday of May, 1941, pursuant to an order of the supervisors designating that day for such sale, was legal as to the date of the sale. Jones v. Seward, 196 Miss. 446, 16 So. 2d 619 (1944).

4.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

Filing of lists of lands sold to state five days after beginning date of delinquent tax sales, did not violate provision of previous similar enactment (Hemingway's Code 1927, § 8297), requiring such lists to be immediately filed in the clerk's office, so as to render void all tax sales in the county, especially in view of the large number of sales which took place. Barron v. Eason, 199 Miss. 739, 25 So. 2d 188 (1946).

Complainants, suing to conform tax title under sale at date other than that fixed by statute, had burden to prove allegation of bill that tax collector's deed was immediately filed in chancery clerk's office. Salter v. Polk, 172 Miss. 263, 159 So. 855 (1935).

Tax deed is prima facie evidence of legal assessment and sale of land, but is not prima facie evidence as to date of sale if sale is not made on day fixed by statute. Salter v. Polk, 172 Miss. 263, 159 So. 855 (1935).

A tax collector is required to file his deed with the chancery clerk for the sale of land for taxes immediately, which means within a reasonable time. Fairley v. Albritton, 121 Miss. 714, 83 So. 801 (1920).

An injunction suit against a corporation to prevent it disposing of the balance of its property until taxes due had been paid and for a decree in personam is not an attachment in chancery. Delta & Pine Land Co. v. Adams, 93 Miss. 340, 48 So. 190 (1908).

7. Time of sale.

Under former section (Code 1930, § 3252) the tax collector is authorized to continue the sale after the date designated by the board of supervisors in its order directing such sale, from day to day if he deems it necessary in order to complete the sale of all the lands which he has been directed to sell. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Tax sale under former section (Code 1930, § 3252) was not void because made on December 8th instead of December 7th, the date designated by the board of supervisors in its order directing such sale. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Statute does not authorize sale of land, not sold on regular day, at a time thereafter designated by order of mayor and board of aldermen. Hemphill v. Wofford, 178 Miss. 687, 173 So. 426 (1937).

8. Order for sale.

Where it was shown that the sheriff and tax collector did not sell all the lands which were delinquent for taxes for the preceding year at the appointed time, whereupon the board of supervisors, at a regular meeting, ordered the sheriff and tax collector to advertise and sell all of such lands at a later time, the sale made by the sheriff and tax collector pursuant to such order was valid. Harmon v. Buckwalter, 233 Miss. 761, 102 So. 2d 895 (1958).

Where no sale of land delinquent for 1929 taxes was made on first Monday of April, 1930, which was regular time appointed by law, order of board of supervisors authorizing sheriff and tax collector to sell all lands in county delinquent for 1929 taxes on first Monday in May held to sufficiently describe lands to be sold. Bass v. Batson, 171 Miss. 273, 157 So. 530 (1934).

§ 27-41-69. Sales of land for taxes; postponement of sales because of emergency.

In case of grave public emergency, to be determined by the Commissioner of Revenue of the Department of Revenue, with the approval of the Governor and Attorney General, the Commissioner of Revenue, may postpone in any county the date fixed by law for the sale of lands for delinquent taxes. In the event any such sale is postponed, the Commissioner of Revenue of the Department of Revenue, with the approval of the Governor and Attorney General, shall designate a date for such sale. Notice of a sale shall be given by advertising it in the manner prescribed by law for the sale of land for taxes; and the same shall be made at the same place and subject to all the provisions of law applicable to such sales at the time appointed by law, and lists of lands sold to the state and to individuals shall be filed in the office of the clerk of the chancery court within the same relative period of time after the sale as is allowed for filing such lists after sales at the regular time, and the clerk shall at once record them; and such lists shall be as valid and have the same effect and be subject to all the provisions of law applicable to such lists made of lands sold at the regular sale for taxes. The Commissioner of Revenue of the Department of Revenue shall provide notice to the clerk of the board of supervisors of the postponement of any sale for taxes in such county and the clerk of the board of supervisors shall enter such notice on the minutes of the board, but the failure of the Commissioner of Revenue to so notify the clerk of the board of supervisors to so record the same shall not invalidate any sale made hereunder.

SOURCES: Codes, 1942, § 9929; Laws, 1934, ch. 195; Laws, 2009, ch. 492, § 82, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — How land not sold at regular time may be sold, see §§ 27-41-65, 27-41-67.

Commissioner of revenue of the department of revenue, see §§ 27-3-3, 27-3-4.

§ 27-41-71. Sales of land for taxes; suits for prior sales.

No civil suit or action shall hereafter be brought by or on behalf of the state or any of its districts, municipalities or political subdivisions on account of the failure, prior to the passage of this chapter, of any tax collector, whether county, district, municipal or levee district, to have held any tax sale of lands for delinquent taxes on the date fixed therefor by law.

SOURCES: Codes, 1942, § 9930; Laws, 1934, ch. 195.

§ 27-41-73. Sales of land for taxes; failure of purchaser to pay bid.

If the purchaser of land at tax sale shall not immediately pay the amount of his bid, the collector shall offer the land again; and if some person will not then bid the amount of taxes and costs, it shall be struck off to the state, as in other cases; but the first purchaser shall be liable for the amount of his bid, to be collected by suit by tax collector in the name of the state. On the same being collected, the tax collector shall notify the chancery clerk of the county, and the clerk shall strike the said lands from the records of land sold to the state, and shall enter said land on the list of lands sold to individuals to be subsequently dealt with as other lands sold to individuals.

SOURCES: Codes, 1942, § 9932; Laws, 1934, ch. 188.

JUDICIAL DECISIONS

1. In general.

This section [Code 1942, § 9932], has regard to the interest of the state in securing its revenue and not that of delinquent taxpayers and in so far as it requires the bid to be immediately paid is directory. The word "immediately" has reference to the course of business with reference to which it is used and reasonable compliance with the spirit and purpose of the statute is all that is required. Judah v. Brothers, 72 Miss. 616, 17 So. 752 (1895).

A tax sale is not void merely because the collector to suit his own convenience and that of the purchaser did not collect the bid and execute the deed until three or four days after the sale. Judah v. Brothers, 72 Miss. 616, 17 So. 752 (1895).

§ 27-41-75. Sales of land for taxes; receipt to purchaser.

The tax collector shall, upon payment of the purchase price, deliver to the purchaser of lands sold for taxes a receipt showing the amount paid, a description of the land sold, the amount of taxes due thereon, and the date of the sale; and such receipt signed by the tax collector shall be evidence of the purchase of said land by said purchaser. The state auditor shall prescribe the form to be used for said receipt.

SOURCES: Codes, 1942, § 9933; Laws, 1934, ch. 188.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

JUDICIAL DECISIONS

1. In general.

The failure of sheriff to sign the list of lands sold for taxes when he transmits the same to the clerk, or the failure to certify to the same, does not render the tax sale void. Darby v. Hunt, 209 Miss. 738, 48 So. 2d 359 (1950).

If a citizen appears at a valid tax sale, purchases land, pays the necessary price therefor and obtains a tax sale receipt, he is entitled to a deed of conveyance for the property purchased, after the period of redemption has expired and where the property has not been redeemed from the sale. Darby v. Hunt, 209 Miss. 738, 48 So. 2d 359 (1950).

Where a purchaser at a tax sale bought some land and a receipt was signed by sheriff and the sheriff failed to transmit the list of land sold to the clerk, the plaintiff could sue the sheriff for damages sustained. Darby v. Hunt, 209 Miss. 738, 48 So. 2d 359 (1950).

Under this section [Code 1942, § 9933], requiring tax collector to deliver receipt to purchaser, and Code 1942, § 9936, pertaining to tax collector's list of tax sales, a definite right or interest in the land sold at the tax sale is conveyed by the tax collector, which, when he performs his duty, constitutes a "conveyance" within the purview of statute allowing tax collector fee for each conveyance of land sold to individuals for taxes. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

§ 27-41-77. Sales of land for taxes; disposition of excess in amount bid.

If any land be sold for more than the amount of taxes due and all costs, the tax collector shall report the amount of excess to the chancery clerk, and on his receipt warrant therefor, shall pay the same into the county treasury. The board of supervisors is directed to transfer all such funds so received to the general funds of the county. If the land be redeemed, or the title of the purchaser be defeated or set aside in any way or for any reason, such excess shall be retained by the county. If only a part of the land be redeemed, the excess shall be apportioned ratably to the amount of taxes due at the time of the sale on the respective parts. The owner of the land may demand of the tax collector a memorandum or receipt showing the amount of excess if any, and, upon the expiration of the period of redemption, without the property being redeemed, such excess shall, upon the request of the owner, be paid to said owner. If the owner of the property does not request payment of the excess within two (2) years from the expiration of the period of redemption, the excess shall be retained by the county. Whenever any person shall present a claim against the excess fund, within the time period provided, certified to by the chancery clerk, the board of supervisors shall order a warrant to issue therefor on the general county fund.

SOURCES: Codes, 1942, § 9934; Laws, 1934, ch. 188; Laws, 1995, ch. 468, § 11, eff from and after passage (approved March 27, 1995).

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

I. UNDER CURRENT LAW.

1.-5. [Reserved for future use.]

II. UNDER FORMER LAW.

6. In general.

Tax collector's liability to repay excess arises only when redemption is effected, and he is not liable for interest thereon before redemption. Bank of Indianola v. Dodds, 90 Miss. 767, 44 So. 767 (1907).

ATTORNEY GENERAL OPINIONS

A board of supervisors has no authority to refund to the purchaser at a tax sale any excess over the mount of taxes due and all costs. Bailey, Nov. 14, 1997, A.G. Op. #97-0736.

A purchaser at a tax sale that is declared void is entitled to a refund of "the purchase paid for lands erroneously sold for taxes," even in a situation where the purchaser paid in excess of the taxes due and costs. Myers, July 28, 2000, A.G. Op. #2000-0410.

A minimum overbid cannot be set at county tax sales. Garner, Sept. 21, 2001, A.G. Op. #01-0590.

§ 27-41-79. Sales of land for taxes; certified lists of lands sold.

The tax collector shall on or before the second Monday of May and on or before the second Monday of October of each year, transmit to the clerk of the chancery court of the county separate certified lists of the lands struck off by him to the state and that sold to individuals, specifying to whom assessed, the date of sale, the amount of taxes for which sale was made, and each item of cost incident thereto, and where sold to individuals, the name of the purchaser, such sale to be separately recorded by the clerk in a book kept by him for that purpose. Except as otherwise provided in Section 27-41-49, all such lists shall vest in the state or in the individual purchaser thereof a perfect title to the land sold for taxes, but without the right of possession for the period of and subject to the right of redemption; but a failure to transmit or record a list or a defective list shall not affect or render the title void. If the tax collector or clerk shall fail to perform the duties herein prescribed, he shall be liable to the party injured by such default in the penal sum of Twenty-five Dollars ($25.00), and also on his official bond for the actual damage sustained. The lists hereinabove provided shall, when filed with the clerk, be notice to all persons in the same manner as are deeds when filed for record. The lists of lands hereinabove referred to shall be filed by the tax collector in May for sales made in April and in October for sales made in September, respectively.

SOURCES: Codes, 1942, § 9935; Laws, 1934, ch. 188; Laws, 1968, ch. 361, § 43; Laws, 2011, ch. 429, § 2, eff from and after July 1, 2011.

Cross References — Recording lists of lands sold for municipal taxes, see §§ 21-33-63, 21-33-67.

Description of land in making assessment, see § 27-35-61.

Redemption of land from tax sale, see § 27-45-1 et seq.

Conveyances to individuals, see § 27-45-23.

Recording lists of lands sold to state for taxes, see § 29-1-21.

Sale of state tax forfeited lands, see § 29-1-39.

Lists of lands sold for drainage taxes, see § 51-31-133.

JUDICIAL DECISIONS

1. In general.
2. Validity and effect of tax sale.
3. —Title of state or purchaser.
4. Liability of sheriff and clerk.
5. Liability of tax collector.

1. In general.

Provision of liability in Miss. Code Ann. § 27-41-79 for a tax collector who fails to properly file the tax-sale list is applicable to municipal tax collectors in addition to those duties imposed by Miss. Code Ann. § 21-33-63; the liability provision applies to municipal tax collectors because Miss. Code Ann. § 27-41-5 states that the provisions of Chapter 41 shall apply to all municipalities in the State of Mississippi, and Miss. Code Ann. § 21-33-53 prescribes the duties of the tax collector. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265 (Miss. 2014).

Accurate land records are vital to the proper functioning of government, and the tax collector's statutory duty to file the tax-sale list implicates the government's strong interest in assuring accurate land-sale records; because the tax-sale list is filed once tax assessment and collection is complete, the act of filing the list is attenuated from the assessment and collection of taxes. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265 (Miss. 2014).

Overarching purpose behind the duty to file the tax-sale list is to provide notice, and the reason the tax collector must file the tax-sale list with the clerk of the chancery court is to provide notice to the public of land transfers and to assure the correctness of the chancery clerk's land records; this distinctive purpose of providing notice is completely unrelated to the assessment and collection of taxes. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265 (Miss. 2014).

Purchaser was not judicially estopped from arguing a remedy under the statute because it did not benefit from its position that the action was governed by the Mississippi Tort Claims Act; also, the purchaser consistently argued that the statute applied and provided a remedy. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265 (Miss. 2014).

Issue of the liability of a city and its tax collector under the statute clearly was placed before the chancery court by the implied consent of the parties because the city and tax collector raised no objection to the issue and requested additional time for briefing, the parties thoroughly briefed the issue, and the trial court ruled on the issue. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265 (Miss. 2014).

A conveyance from the chancery clerk is necessary to transfer title to the tax purchaser, where the sheriff and the tax collector's list of tax sale has been duly made and filed with the clerk. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229 (1951).

The word "conveyance" as used in Code 1942, § 716, which provides that three years' actual occupation of land held under a conveyance by a tax collector shall bar suit to recover such land, does not necessarily mean a deed of conveyance to be executed by the chancery clerk under Code 1942, § 9958, providing for execution of deeds of conveyance to individuals purchasing land at tax sales. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229 (1951).

Under this section [Code 1942, § 9935] and Code 1942, § 9948, it is the duty of tax collector, in making out his list to be filed with chancery clerk of land sold to the state, to enter for each separate assessment (1) the date when sold, (2) to whom assessed, (3) the description, (4) the number of acres, and (5) the valuation, after which he should extend on the list opposite each separate assessment the statement (a) of the various items of the original or basic ad valorem taxes including district levies, (b) of the damages, (c) of the fees and (d) of the total taxes and costs. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

2. Validity and effect of tax sale.

Tax collector's list, which is equally capable of interpretation that he made two sales of adjoining tracts of land separately assessed or that he made only one sale, presents self-contained latent ambiguity, and testimony of two private persons who were bidders at sale is admissible to show two sales of land were made. Claughton v. Leavenworth, 204 Miss. 595, 37 So. 2d 776 (1948).

Fact that tax collector's certificate attached to the list of state sales filed with the chancery clerk erroneously stated that the sales were made September 2, 1929 for delinquent taxes for fiscal year 1929, rather than for the year 1928, did not invalidate tax sale, since mere clerical error was involved and complainants' pleadings and documentary evidence in the case showed that the sales were for 1928 taxes. Barron v. Eason, 199 Miss. 739, 25 So. 2d 188 (1946).

Failure to group together in one description on the list of land sold to the state for taxes as required by Code 1930, § 3256, five separately assessed parcels comprising one tract, does not raise presumption that they were not offered for sale and sold in five separate sales as required by Code 1930, § 3249, so as to render the tax sale void, in the absence of other circumstances showing that more than one sale was made. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Presumption arises that tax collector, in striking off land to the state at tax sale, properly offered the land for sale as required by Code 1930, §§ 3249 and 3256, in the absence of evidence on the list of land sold to the state for taxes or other proof to the contrary. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Where it does not affirmatively appear on the face of the list of land sold to the state for taxes as provided by Code 1930, § 3256, that the lands were not first offered to individuals in the manner required by Code 1930, § 3249, or that all of the lands comprising the tract and described in such list, even though listed as separate parcels, were not thereafter struck off to the state as one sale for the several sums, listed as total taxes and costs against each separate parcel, the presumption prevails that they were first offered to individuals and later struck off to the state as one sale. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

List of land sold to the state for taxes as provided by Code 1930, § 3256, has effect of vesting title in the state by one conveyance of all the land described, if sold according to law. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Evidence consisting of township maps showing that five parcels of land comprised one tract, and certified list of land sold to the state, as transmitted by the tax collected to the chancery clerk, disclosing the total of all taxes and costs assessed or claimed against each parcel, and that the sales of different lands assessed to other owners and comprising a single tract were made a part of such tract on two different days, was insufficient to overcome presumption that the tract was validly sold to the state. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

If tax collector struck off in consecutive order several separate parcels as one sale to the state for the several amounts of taxes and the incident costs, collector's failure to note as one total sum what the several amounts of taxes and costs would make in the aggregate by simple addition would not vitiate the sale, where his list furnished all of the data required by the statute to show "the amount of taxes for which the sale was made" and "each item of costs incident thereto." State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

3. —Title of state or purchaser.

Where, subject to the sale of land for nonpayment of special improvement assessments but prior to the sale's maturity, the state highway commission took a deed to the property from the owner of record, it acquired only the former owner's equity of redemption; and when the commission failed to redeem the property within the two year statutory period it had no further interest in the lands, and the purchaser at the tax sale became vested with a perfect legal title. Equity Servs. Co. v. Mississippi

State Hwy. Comm'n, 192 So. 2d 431 (Miss. 1966).

Lists of land sold for nonpayment of taxes served to vest the purchaser with a perfect title to the land sold, without right to possession and subject to right of redemption, and the lists when filed with the chancery clerk are notice to all persons as are deeds when filed for record, and a purchaser at a tax sale was a necessary party to an eminent domain action filed before the period of redemption had expired. Mississippi State Hwy. Comm'n v. Casey, 253 Miss. 685, 178 So. 2d 859 (1965).

Where land is sold to state at a tax sale the state becomes the owner of the land and the taxes before due are discharged as a demand against the former owner and after the sale and during the time allowed for redemption, the state has an inchoate title to the land which may or may not ripen into a perfect title. State v. Rogers, 206 Miss. 643, 39 So. 2d 533 (1949).

Purchaser of property receives no title under void tax sale. Tardo v. Sterling, 205 Miss. 439, 38 So. 2d 911 (1949), error overruled 205 Miss. 439, 39 So. 2d 504.

Tax sale purporting to convey entire property does not convey to tax purchaser minerals in the land separately owned and separately assessed by tax collector, when the tax roll in hands of collector showed the separate assessment and roll, as well as copies of tax receipts, disclosed fact that taxes on minerals for two years before sale had actually been paid. McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948).

Tax purchaser is not innocent purchaser for value, but takes title subject to all infirmities. James v. Shaffer, 202 Miss. 565, 32 So. 2d 749 (1947); McNatt v. Hyman, 204 Miss. 824, 36 So. 2d 161 (1948), suggestion of error sustained, 204 Miss. 840, 38 So. 2d 107 (1948); James v. Tax Inv. Co., 206 Miss. 605, 40 So. 2d 539 (1949).

A tax sale under an assessment of land by valid description, even though not assessed to the true owner, when the assessment is shown by the certified list thereof, vests in the state or the individual purchaser "a perfect title to the land sold for taxes." Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

4. Liability of sheriff and clerk.

The provision pertaining to liability of the sheriff or clerk on his bond for actual damages sustained deals solely with the requirement that the tax collector shall transmit to the clerk a certified list of lands sold by him and that the clerk shall record it in a book kept for that purpose. Accordingly, this section [Code 1942, § 9935] has no application in action by a remote tax purchaser to recover on tax collector's bond the amount paid for the property and for improvements thereon because the taxes had in fact been paid by the owner, where there was no default in transmitting to the clerk the tax collector's list of lands sold. State, ex rel. Boyle v. Matthews, 196 Miss. 833, 18 So. 2d 156 (1944).

Tax collector, in making out and filing certified list of lands sold for taxes, is performing a duty solely for the public, and only owners whose lands were sold and the immediate purchasers thereof have any special interest therein apart from the public generally; and, therefore, a remote tax purchaser who examined such list and relied thereon in purchasing land from the immediate tax purchaser could not recover on tax collector's bond for the amount paid for the property and for improvements thereon because taxes had in fact been paid by the owner. State, ex rel. Boyle v. Matthews, 196 Miss. 833, 18 So. 2d 156 (1944).

5. Liability of tax collector.

Statute mandates the tax collector to act and positively imposes upon the tax collector the duty to file the tax-sale list with the chancery clerk; because there is no element of choice or judgment, the duty is ministerial, and the Mississippi Tort Claims Act affords no immunity. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265 (Miss. 2014).

Mississippi Tort Claims Act (MTCA) did not provide a city and its tax collector with immunity from suit on a purchaser's negligence claim; because the overarching purpose of filing the tax-sale list is to provide notice, and the tax collector's failure to file the tax-sale list does not arise out of the assessment or collection of any tax or fee under the MTCA. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265 (Miss. 2014).

Purchaser's claim that a municipal tax collector failed to file the tax-sale list as required by the statute was based on the tax collector's failure to perform her official and statutory duty, and because it was not a tort claim, it was not governed by the Mississippi Tort Claims Act (MTCA); the purchaser's negligence action was governed by the MTCA, but its suit based on the statute was a separate claim not subject to the MTCA. Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265 (Miss. 2014).

Trial court erred by dismissing a purchaser's claim that a county, city, and municipal tax collector were liable under the statute because the purchaser stated a claim under the statute; the purchaser was an intended claimant under the statute, which stated that the tax collector would be liable to any party injured Booneville Collision Repair, Inc. v. City of Booneville, 152 So. 3d 265 (Miss. 2014).

ATTORNEY GENERAL OPINIONS

Perfect title, without right of possession for period of and subject to right of redemption, vests to purchaser of land at tax sale; purchaser of record is required to convey his interest to other party before county is legally authorized to acknowledge change of interests in real estate. Walker, Jan. 24, 1990, A.G. Op. #90-0002.

When property was struck off to the City after a 1992 tax sale, the city obtained a perfect title, without the right of possession and subject to redemption. If the property is not redeemed within the two year redemption period, perfect title with immediate right of possession of the property vests in the City. See Sections 21-33-69, 21-33-63. Navarro, August 23, 1995, A.G. Op. #95-0554.

As provided in Section 27-41-79, the tax collector's list of lands sold operates to transfer title to the purchaser. The clerk's deed is evidence of the right of possession and that the redemption period as run. The lack of deed does not defeat the transfer of title. Navarro, August 23, 1995, A.G. Op. #95-0554.

In regard to property that a county acquired after a tax sale, the county succeeded to and acquired the rights of possession and redemption belonging to the former owner and could redeem the property from the tax sale, including the payment of accrued interest. Griffith, March 31, 2000, A.G. Op. #2000-0167.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 857 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Assistance, Writ of, Form 3 (petition for writ of assistance to obtain possession after tax sale).

17 Am. Jur. Legal Forms 2d, State and Local Taxation §§ 238:74, 238:75 (tax deed).

12 Am. Jur. Legal Forms, Taxation, Forms 12:362-12:366 (tax deed).

CJS. 85 C.J.S., Taxation §§ 1308 et seq., 1336 et seq.

§ 27-41-81. Sales of land for taxes; certified lists of lands sold.

The tax collector shall on or before the first Monday of June transmit to the clerk of the chancery court of the county separate certified lists of the lands struck off by him to the state and that sold to individuals, specifying to whom assessed, the day of the sale, the amount of taxes for which the sale was made and each item of cost incidental thereto, and, where sold to individuals, the name of the purchaser, to be separately recorded by the clerk in books kept by him for that purpose. Except as otherwise provided in Section 27-41-59, the lists shall vest in the state or the individual purchaser thereof a perfect title to the land sold for taxes, but without the right of possession and subject to the right of redemption; but a failure to transmit or record a list, or a defective list, shall not affect or render the title void. If the tax collector or clerk shall fail to perform the duties herein prescribed, he shall be liable to the party injured by such default in the penal sum of Twenty-five Dollars ($25.00), and also on his bond for the actual damages sustained.

The list hereinabove provided shall, when filed with the clerk, be notice to all persons in the same manner as are deeds when filed for record.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 17 (26); 1857, ch. 3, art. 36; 1871, § 1698; 1880, § 523; 1892, §§ 3815, 3818; 1906, §§ 2933, 4333; Hemingway's 1917, §§ 5268, 6967; 1930, § 3256; 1942, § 9936; Laws, 1912, ch. 230; Laws, 1922, ch. 241; Laws, 1934, ch. 200; Laws, 1935, Ex. ch. 39; Laws, 1936, ch. 307; Laws, 1968, ch. 361, § 44 eff from and after January 1, 1972; Laws, 2011, ch. 429, § 3, eff from and after July 1, 2011.

Cross References — Recording lists of lands sold for municipal taxes, see §§ 21-33-63, 21-33-67.

Description of land in making assessment, see § 27-35-61.

Redemption of land from tax sale, see § 27-45-1 et seq.

Conveyances to individuals, see § 27-45-23.

Recording lists of lands sold to state for taxes, see § 29-1-21.

Sale of state tax forfeited lands, see § 29-1-39.

Lists of lands sold for drainage taxes, see § 51-31-133.

JUDICIAL DECISIONS

I. UNDER CURRENT LAW.

1. In general.
2. Lists of property sold and effect thereof.
3. Conveyance to purchaser.
4. Rights and liability of former owner.

5.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. In general.
12. Failure to make and file list.
13. Conveyance to purchaser.

I. UNDER CURRENT LAW.

1. In general.

Court, if it can do so, must harmonize Code 1942, §§ 3936 (as amended by Laws, 1944, chap. 179, § 1(D), subsection (d)), 9936, and 9958, which were adopted by the legislature at the same time. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

2. Lists of property sold and effect thereof.

Lists of land sold for nonpayment of taxes served to vest the purchaser with a perfect title to the land sold, without right to possession and subject to right of redemption, and the lists when filed with the chancery clerk are notice to all persons as are deeds when filed for record, and a purchaser at a tax sale was a necessary party to an eminent domain action filed before the period of redemption had expired. Mississippi State Hwy. Comm'n v. Casey, 253 Miss. 685, 178 So. 2d 859 (1965).

The tax collector's list of lands sold operates to transfer the title to the individual purchaser and the clerk's deed is simply evidence of right of possession and that the redemption right had expired. Stockstill v. Bennett, 215 Miss. 417, 61 So. 2d 154 (1952).

The failure of sheriff to sign the list of lands sold for taxes when he transmits the same to the clerk, or the failure to certify to the same, does not render the tax sale void. Darby v. Hunt, 209 Miss. 738, 48 So. 2d 359 (1950).

Where a purchaser at a tax sale bought some land and a receipt was signed by sheriff and the sheriff failed to transmit the list of land sold to the clerk, the plaintiff could sue the sheriff for damages sustained. Darby v. Hunt, 209 Miss. 738, 48 So. 2d 359 (1950).

It is the list, not the certificate, which conveys title to the state. Slush v. Patterson, 201 Miss. 113, 28 So. 2d 738 (1947), error overruled, 201 Miss. 131, 29 So. 2d 311 (1947).

Sale of land to the state was void where, although each tract was separately described each time in the notice of sale and in the list of lands sold, there was no special separate calculation of the state tax, the county tax and the damages as to the several tracts, but only a total calculation based upon the sum of all of the values of all of the parcels together and a total of all the taxes and all of the damages calculated on the unification of the several parcels. Slush v. Patterson, 201 Miss. 113, 28 So. 2d 738 (1947), error overruled, 201 Miss. 131, 29 So. 2d 311 (1947).

This section [Code 1942, § 9936], under similar enactment as Code 1930, § 3256, does not require immediate filing of the list of lands sold to the state for taxes. Harlan v. Martin, 200 Miss. 667, 27 So. 2d 725 (1946).

A tax sale under an assessment of land by valid description, even though not assessed to the true owner, when the assessment is shown by the certified list thereof, vests in the state or the individual purchaser "a perfect title to the land sold for taxes." Stern v. Parker, 200 Miss. 27, 25 So. 2d 787 (1946), error overruled, 200 Miss. 41, 27 So. 2d 402 (1946).

Fact that tax collector's certificate attached to the list of state sales filed with the chancery clerk erroneously stated that the sales were made September 2, 1929, for delinquent taxes for fiscal year 1929, rather than for the year 1928, did not invalidate tax sale, since mere clerical error was involved and complainants' pleadings and documentary evidence in the case showed that the sales were for 1928 taxes. Barron v. Eason, 199 Miss. 739, 25 So. 2d 188 (1946).

Legislature, in amending previous statutes by Code 1930, § 3256, Code 1942, § 9936, intended to avoid previous court decisions contrary to the provisions of the amendment that "a failure to transmit or record a list, or a defective list, shall not affect or render the title void." Clanton v. Callender, 198 Miss. 614, 22 So. 2d 487 (1945).

By virtue of amendment that "failure to transmit or record a list, or a defective list, shall not affect or render the title void," a defective certificate, or even a list which has not been certified, as where the tax collector fails to sign the certificate, does not render the state's title to land struck off to it at tax sale void. Clanton v. Callender, 198 Miss. 614, 22 So. 2d 487 (1945).

Under this section [Code 1942, § 9936], the tax collector's list of tax sales confers on purchaser an inchoate right in the land defeasible only by redemption, which list, when recorded, is notice to all persons in the same manner as are deeds when filed for record. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

Tax collector, in making out and filing certified list of lands sold for taxes, is performing a duty solely for the public, and only owners whose lands were sold and immediate purchasers thereof have any special interest therein apart from the public generally; and therefore, a remote tax purchaser who examined such list and relied thereon in purchasing land from an immediate tax purchaser could not recover on tax collector's bond for the amount paid for the property and for improvements thereon because taxes had in fact been paid by the owner. State, ex rel. Boyle v. Matthews, 196 Miss. 833, 18 So. 2d 156 (1944).

3. Conveyance to purchaser.

Under this section [Code 1942, § 9936] and Code 1942, § 9933, requiring tax collector to deliver receipt to purchaser, a definite right or interest in the land sold at the tax sale is conveyed by the tax collector, which, when he performs his duty, constitutes a "conveyance" within the purview of Code 1942, § 3936(d), as amended by Laws 1944, chap 179, § 1(D), subsection (d), allowing tax collector fee of $1 for each conveyance of land sold to individuals for taxes. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945); Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229 (1951).

A conveyance from the chancery clerk is necessary to transfer title to the tax purchaser, where the sheriff and the tax collector's list of tax sale has been duly made and filed with the clerk. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229 (1951).

The word "conveyance" as used in Code 1942, § 716, which provides that three years' actual occupation of land held under a conveyance by a tax collector shall bar suit to recover such land, does not necessarily mean a deed of conveyance to be executed by the chancery clerk under Code 1942, § 9958, providing for execution of deeds of conveyance to individuals purchasing land at tax sales. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229 (1951).

If a citizen appears at a valid tax sale, purchases land, pays the necessary price therefor and obtains a tax sale receipt, he is entitled to a deed of conveyance for the property purchased, after the period of redemption has expired and where the property has not been redeemed from the sale. Darby v. Hunt, 209 Miss. 738, 48 So. 2d 359 (1950).

Inadvertence cannot be ascribed to the legislature in retaining provision allowing tax collection of $1 for each conveyance of land sold to individuals for taxes, in amending Code 1942, § 3936(d) by Laws 1944, ch. 179, § 1(D), subsection (d), in view of the fact that Code 1942, §§ 3936 and 9958 were enacted together in the Codes of 1930 and 1942, and especially in view of the fact that Code 1942, § 9936 re-enacted Code 1930, § 3256, and enlarged rather than diminished the effect of lists of lands sold for taxes by providing that it should have the same effect of notice as a deed filed for record. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

The clerk's deed, under Code 1942, § 9958, merely conferred the right to possession, as well as evidencing that the period of redemption has expired and that the land was not redeemed, in view of the fact that by virtue of this section [Code 1942, § 9936] the tax collector's list of tax sales confers on the purchaser an inchoate right in the land defeasible only by redemption. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

Tax sale for delinquent municipal taxes under which municipality acquired the land in question was not void, because the city tax collector did not immediately after the sale convey it to the city and deposit the deed with the city clerk to remain for two years as provided by municipal ordinance, where in view of previous similar enactment of this section [Code 1942, § 9936], and Code 1930, § 2589 (Code 1942, § 3754), the list of tax sales conveyed the title to the city. Lear v. Hendrix, 186 Miss. 289, 187 So. 746 (1939).

4. Rights and liability of former owner.

Where tenants in common failed to redeem the lands from a tax sale their rights in the land and its timber were extinguished by the expiration of the redemption period, and they waived whatever right of action they might have had for the conversion of the timber from the lands. Eden Drainage Dist. v. Swaim, 212 Miss. 386, 54 So. 2d 547 (1951), error overruled 212 Miss. 386, 55 So. 2d 439.

5.-10. [Reserved for future use.]

II. UNDER FORMER LAW.

11. In general.

Statute providing sale of land for taxes conveys perfect title to purchaser held qualified by other provisions creating lien. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

12. Failure to make and file list.

Failure to make and file the list of lands struck off to the state for taxes invalidates the sale. Burnett v. State, 72 Miss. 994, 18 So. 432 (1895).

13. Conveyance to purchaser.

Conveyance from the chancery clerk is not necessary to transfer title to the tax purchaser where the sheriff and tax collector's list of the tax sale has been duly made and filed with the chancery clerk. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229 (1951).

ATTORNEY GENERAL OPINIONS

Where lands were sold or patented by the state after January 1st, 1936, such lands were not taxable for said year. 1935-37, A.G. Op. p. 109.

When lands are sold to the state a perfect title is in the state subject to the right of redemption. If redeemed prior to the expiration of the time for redemption the lands are assessed in the name of the owner at the time of the sale. This is done in order that the amount necessary to redeem may be fixed. Unless the lands are redeemed within the time allowed by law, the title is in the state as of the date of the sale. 1935-37, A.G. Op. p. 109.

Purchaser at tax sale is record owner of land without right of possession and subject to redemption; further, when redemption has ended tax purchaser has right of possession even if clerk does not give tax deed and tax purchaser is owner of property for all purposes and is subject to taxation for ownership of property. Brumfield Oct. 21, 1993, A.G. Op. #93-0734.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 857 et seq.

17 Am. Jur. Legal Forms 2d, State and Local Taxation §§ 238:74, 238:75 (tax deed).

12 Am. Jur. Legal Forms, Taxation, Forms 12:362-12:366 (tax deed).

2 Am. Jur. Pl & Pr Forms (Rev), Assistance, Writ of, Form 3 (petition for writ of assistance to obtain possession after tax sale).

CJS. 85 C.J.S., Taxation §§ 1308 et seq., 1336 et seq.

§ 27-41-83. Liability and actions for trespass or waste on lands forfeited to state.

The owner of lands sold or struck off to this state as provided in Section 27-41-81 shall not have the right to cut merchantable timber, cordwood or brush from any such land until such land be redeemed from the tax sale and title again be perfected in the individual owner thereof, and such former owner of said property during the period of redemption shall not have the right to prospect for or to extract and/or attempt to extract from any such lands so forfeited to the state for nonpayment of taxes any minerals, stone or gravel that may be found on or under said land, and provided further that the former owner of any land so forfeited to the state for nonpayment of taxes shall commit no waste on the lands or premises so forfeited to the state during the period of redemption.

If the former owner or any other person in violation of the provisions of this section cuts, fells, removes or otherwise injures any tree on property forfeited to the state for taxes either during the period of redemption or after the title matures in the state, or extracts, or attempts to extract, minerals therefrom including rock, stone and gravel, commits or permits to be committed waste or any other trespass on such land, such person shall be liable for a penalty in the sum of Five Dollars ($5.00) per acre for each acre upon which any trespass or violation of this section is committed, and, in addition to said penalty, such person shall be liable for actual damages for the property taken or injured. All such penalties and damages may be recovered in one and the same action and suits to recover the same shall be instituted and prosecuted in the name of the state by the attorney general and any penalties and damages recovered in such actions shall be apportioned fifty percent (50%) to the state and fifty percent (50%) to the county in which the land lies. Provided that during the period of redemption the owner may cut and use wood from contiguous woodlands for fuel, fences and like farm purposes, but not for sale.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction therefor, shall be fined not less than Ten Dollars ($10.00) nor more than Fifty Dollars ($50.00), in the discretion of the court, and upon the second offense, may be sentenced to serve not more than sixty (60) days in the county jail, in the discretion of the trial court.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 17 (26); 1857, ch. 3, art. 36; 1871, § 1698; 1880, § 523; 1892, §§ 3815, 3818; 1906, §§ 2933, 4333; Hemingway's 1917, §§ 5268, 6967; 1930, § 3256; 1942, § 9936; Laws, 1912, ch. 230; Laws, 1922, ch. 241; Laws, 1934, ch. 200; Laws, 1935, Ex. ch. 39; Laws, 1936, ch. 307; Laws, 1968, ch. 361, § 44, eff from and after January 1, 1972.

Cross References — Attorney general's employment of special counsel to prosecute suits, see § 27-41-85.

Payment of expenses of suits and distribution of recoveries, see § 27-41-87.

Redemption of land from tax sale, see § 27-45-1 et seq.

Protection of public lands from trespass, see §§ 29-1-17, 29-1-19.

Unlawfulness of cutting timber on state tax forfeited land until payment of purchase price, see § 29-1-41.

Penalty for trespass on state lands, see § 95-5-27.

Criminal penalty for cutting timber on state lands, see § 97-7-65.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-41-85. Liability and actions for trespass or waste on lands forfeited to state; special counsel.

The attorney general, by and with the consent of the Governor, may employ special counsel to assist him in the investigation and prosecution of such claims or demands and suits under Section 27-41-83; and he may contract to pay such attorneys so employed such reasonable compensation as may be agreed upon, not to exceed twenty percent (20%) of the amount recovered and collected.

SOURCES: Codes, 1942, § 9938; Laws, 1935, Ex. ch. 39; Laws, 1936, ch. 307.

§ 27-41-87. Liability and actions for trespass or waste on lands forfeited to state; distribution of recoveries.

The board of supervisors of any county affected is hereby authorized to pay such reasonable expenses, except attorneys' fees, as may be incurred in obtaining information deemed necessary to maintain an action under Section 27-41-83.

In any case where funds are received by the Attorney General in consequence of any action or demand under Section 27-41-83, involving lands in more than one county, and where the court in which said suit was filed does not allot the funds between said counties, or where said counties cannot agree among themselves as to the proper distribution of such funds, then the Attorney General may apply to the chancery court in the county where the land or some part thereof is located in vacation or in term time for an allotment and distribution of the funds between the counties. It shall be the duty of the Attorney General in such case to notify the interested counties that he has filed such application, and he shall notify them when and where said application will be heard. The judgment of the chancellor in such matters will be final, and the Attorney General shall distribute said funds in accordance with the chancellor's order, and a copy of said order shall be filed with the chancery clerk in each of the interested counties. The counties shall have the right to agree among themselves as to the proper distribution of any such fund; and where such agreement is had, it shall be entered on the minutes of the board of supervisors in each county, and the Attorney General shall then distribute the funds in accordance therewith. However, it shall be the duty of the court hereafter, in which suit is filed or tried, to make proper distribution of such funds between said counties.

SOURCES: Codes, 1942, § 9939; Laws, 1935, Ex. ch. 39; Laws, 1936, ch. 307; Laws, 1938, ch. 290.

§ 27-41-89. Sections 27-41-81 through 27-41-87 as cumulative.

Sections 27-41-81 through 27-41-87 are to be construed to be cumulative and in addition to other remedies given the state for the protection of lands forfeited to the state for taxes.

SOURCES: Codes, 1942, § 9940; Laws, 1934, ch. 200; Laws, 1935, Ex. ch. 39; Laws, 1936, ch. 307.

AD VALOREM TAXES UPON PERSONAL PROPERTY

Sec.
27-41-101. Collection of taxes on personal property; notice to taxpayer demanding payment; filing of notice of tax lien; entry of judgment for taxes, interests, fees and costs; effect of judgment; execution of judgment generally; duration of lien.
27-41-103. Collection of taxes on personal property; issuance of warrant to sheriff

for seizure and sale of property generally; employment of certain off-duty deputy sheriffs to seize and sell personal property.
27-41-105. Collection of taxes on personal property; issuance of jeopardy warrant to sheriff or off-duty deputy sheriff; proceedings by circuit court clerk upon receipt of notice of tax lien; proceedings upon jeopardy warrant.
27-41-107. Collection of taxes on personal property; execution of warrant by sheriff or off-duty deputy sheriff; compensation of sheriff and off-duty deputy sheriff; manner of disposition of property.
27-41-109. Collection of taxes on personal property; procedure where proceeds of sale of property not sufficient to satisfy claim for taxes.

§ 27-41-101. Collection of taxes on personal property; notice to taxpayer demanding payment; filing of notice of tax lien; entry of judgment for taxes, interests, fees and costs; effect of judgment; execution of judgment generally; duration of lien.

(1) In the event the tax collector elects to use the provisions of Sections 27-41-101 through 27-41-109 to collect delinquent tax payments on personal property and, upon default of the payment of ad valorem taxes upon personal property upon the due dates prescribed in this chapter or, in the case of mobile or manufactured homes classified as personal property, the due date prescribed in Section 27-53-11, the tax collector shall give written notice to the taxpayer and to any secured lender demanding the payment of the ad valorem taxes on personal property then remaining in default within twenty (20) days from the date of the delivery of the notice. The notice shall be sent by certified or registered mail to the taxpayer at the address given by the taxpayer to the tax assessor or collector upon registration, or delivered by an employee of the tax collector either to the taxpayer or someone of suitable age and discretion at the taxpayer's place of business or residence. The notice shall be sent by certified or registered mail to the secured lender at the address listed on the State Tax Commission's statewide network at the time the taxes become delinquent if a certificate of title has been issued or the address given on the instruments filed with the chancery clerk granting the lender a security interest in the manufactured home.

(2) If the taxpayer, any person liable for the payment of ad valorem taxes on personal property or the secured lender, if any, fails or refuses to pay the taxes after receiving the notice and demand as provided in subsection (1) of this section, the tax collector may file a notice of a tax lien for such ad valorem taxes with the circuit clerk of the county in which the taxpayer resides or owns property which shall be enrolled as a judgment on the judgment roll.

(3) Immediately upon receipt of the notice of the tax lien for ad valorem taxes on personal property, the circuit clerk shall enter the notice of a tax lien as a judgment upon the judgment roll and show in the appropriate columns the name of the taxpayer as judgment debtor, the name of the tax collector as judgment creditor, the amount of the taxes, interest, fees and costs and the date and time of enrollment. The judgment shall be valid as against mortgagees, pledgees, entrusters, purchasers, judgment creditors, and other persons

from the time of filing with the clerk; provided, however, that the preference of a judgment in regard to any personal property upon which the taxes are assessed, excepting motor vehicles as defined by the Motor Vehicle Ad Valorem Tax Law of 1958, and manufactured housing and mobile homes having certificates of title as defined by the Mississippi Motor Vehicle and Manufactured Housing Title Law shall be entitled to preference over all judgments, executions, encumbrances or liens whensoever created upon such personal property. The judgment shall be valid and a preference in the case of manufactured housing and mobile homes having certificates of title if the judgment is for the taxes reflected on the county tax rolls and related fees and charges on that manufactured home or mobile home and the required notice was furnished to the taxpayer and the lien creditor reflected on the certificate of title or chancery clerk's records, as applicable. The amount of the judgment shall be a debt due the county and remain a lien upon all property and rights to property belonging to the taxpayer, both real and personal, including choses in action, with the same force and like effect as any enrolled judgment of a court of record, and shall continue until satisfied. The judgment shall be the equivalent of any enrolled judgment of a court of record and shall serve as authority for the issuance of writs of execution, writs of attachment, writs of garnishment or other remedial writs. The tax collector may issue warrants for collection of ad valorem taxes from such judgments, in lieu of the issuance of any remedial writ by the circuit clerk, as provided in Sections 27-41-103 and 27-41-105; provided, however, that the judgment shall not be a lien upon the property of the taxpayer for a longer period than seven (7) years from the date of the filing of the notice of tax lien for ad valorem taxes, damages and interest unless action be brought thereon before the expiration of such time or unless the tax collector refiles such notice of tax lien before the expiration of such time. The judgment shall be a lien upon the property of the taxpayer for a period of seven (7) years from the date of refiling such notice of tax lien unless action be brought thereon before the expiration of such time or unless the tax collector refiles such notice of tax lien before the expiration of such time. There shall be no limit upon the number of times that the tax collector may refile notices of tax liens.

SOURCES: Laws, 1995, ch. 435, § 1; Laws, 1996, ch. 394, § 2; Laws, 1999, ch. 556, § 33, eff from and after July 1, 1999.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Motor Vehicle Ad Valorem Tax Law of 1958, see § 27-51-1 et seq.

Mississippi Motor Vehicle and Manufactured Housing Title Law, see § 63-21-1 et seq.

JUDICIAL DECISIONS

1. In general.

Permissive collection method offered in Miss. Code Ann. § 27-41-101 would only come into play if county tax lien was assessed on separate property and it attempted to collect on mobile home to satisfy its claim, but § 27-41-101 was not needed for the county to have priority over other lenders for ad valorem taxes assessed upon the mobile home. In re Riley, 550 B.R. 728 (Bankr. N.D. Miss. 2016).

ATTORNEY GENERAL OPINIONS

Section 27-41-101(1) mandates the tax collector to send the written notice of default and demand for payment to taxpayers who are in default of payment of ad valorem taxes on personal property. The tax collector has no discretion in sending out the notices. Pepper, December 21, 1995, A.G. Op. #95-0829.

Under Section 27-41-101(1), the tax collector is not exempt from prepaying the filing fee, however, such fee may be added to the lien at the time of enrollment. Hollimon, July 12, 1996, A.G. Op. #96-0400.

If a county obtains a judgment lien for mobile home ad valorem tax delinquencies, and the mobile home does not sell when advertised for public sale, the county may execute on the judgment in a manner similar to other civil judgments and may gain possession and control over the mobile home and attempt to sell it when sale conditions are more favorable during the period of the lien. Beam, July 18, 1997, A.G. Op. #97-0176.

The notice provisions of Miss. Code Section 27-43-3 may be used as a guideline by tax collectors in satisfying the requirements of Section 27-41-101. Heard, August 28, 1998, A.G. Op. #98-0534.

Neither the county board of supervisors nor the tax collector had any authority to compromise a tax claim where the actions of a county tax collector with regard to the assessment of personal property taxes were authorized, and there was no dispute over valuation or assessment. Aycock, August 27, 1999, A.G. Op. #99-0444.

Section 21-33-53 authorizes a municipality to use the collection of personal ad valorem taxes as set forth in Section 27-41-101 et seq., and the chief of police or his designee may exercise the powers and discharge the duties imposed upon the sheriff by Section 27-41-107 to collect municipal taxes. Cole, Feb. 14, 2003, A.G. Op. #03-0037.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 18, 21-23.

72 Am. Jur. 2d, State and Local Taxation §§ 640, 643, 737-755, 771-793.

CJS. 80 C.J.S., Sheriffs and Constables §§ 259, 260.

84 C.J.S., Taxation §§ 1-3, 1109-1119.

§ 27-41-103. Collection of taxes on personal property; issuance of warrant to sheriff for seizure and sale of property generally; employment of certain off-duty deputy sheriffs to seize and sell personal property.

The tax collector may issue a warrant under his official seal directed to the sheriff of any county of the state commanding him to immediately seize and sell the real and personal property of the person owning the property found within the county in which the judgment is enrolled for the payment of the amount of ad valorem tax on personal property as set forth in the warrant, and the cost of executing the warrant. Any such property sold shall be sold by sheriff's bill of sale.

As an alternative to the sheriff seizing and selling the personal property of the person, the tax collector or a deputy tax collector may employ an off-duty deputy sheriff, certified by the Board on Law Enforcement Officer Standards and Training, to exercise the same authority as the sheriff under Sections 27-41-101 through 27-41-109 and Sections 13-3-161 through 13-3-173 with regard to personal property, if (a) the sheriff of the county has agreed in writing that the tax collector may employ such deputy, and (b) the board of supervisors has approved the agreement between the tax collector and the sheriff.

SOURCES: Laws, 1995, ch. 435, § 2; Laws, 1999, ch. 556, § 34; Laws, 2011, ch. 418, § 1, eff from and after July 1, 2011.

Cross References — Compensation of off-duty deputy sheriff employed to seize, sell personal property, see § 27-41-107.

ATTORNEY GENERAL OPINIONS

Section 27-41-103 clearly states that in response to a warrant issued by the tax collector, the sheriff of the county in which the property is found shall seize and sell such property to satisfy a judgment enrolled against a taxpayer as a result of unpaid ad valorem taxes on personal property. Pepper, December 21, 1995, A.G. Op. #95-0829.

The tax collector is required to send the sheriff's fee at the time of issuing a warrant under Sections 27-41-103 et. seq. Hollimon, July 12, 1996, A.G. Op. #96-0400.

The tax collector should pay the sheriff's fee from the general operating budget of the tax collector's office. However, the cost of executing the warrant may be recovered from the proceeds of the sale of the property seized by the sheriff. Hollimon, July 12, 1996, A.G. Op. #96-0400.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 18, 21-23.

72 Am. Jur. 2d, State and Local Taxation §§ 640, 643, 737-755, 771-793.

CJS. 80 C.J.S., Sheriffs and Constables §§ 259, 260.

84 C.J.S., Taxation §§ 1-3.

85 C.J.S., Taxation §§ 1109-1119.

§ 27-41-105. Collection of taxes on personal property; issuance of jeopardy warrant to sheriff or off-duty deputy sheriff; proceedings by circuit court clerk upon receipt of notice of tax lien; proceedings upon jeopardy warrant.

If the tax collector has cause to believe and believes that the collection of ad valorem taxes on personal property due by any taxpayer will be jeopardized by delay, he may immediately file with the circuit clerk a notice of tax lien for ad valorem taxes on personal property and issue a jeopardy warrant under official seal directed to the sheriff or off-duty deputy sheriff employed by the county tax collector of any county of this state.

The circuit clerk shall proceed as provided in Section 27-41-101 upon receiving a copy of the notice of tax lien from the tax collector. Any tax determined to be due under a jeopardy assessment shall be a debt due to the county, and, when thus enrolled upon the judgment roll of the county, shall be the equivalent of any enrolled judgment of a court of record, and shall constitute a lien on all property and rights to property of the judgment debtor. The sheriff, upon receipt of the jeopardy warrant, shall immediately proceed in accordance with Section 27-41-107.

SOURCES: Laws, 1995, ch. 435, § 3; Laws, 2011, ch. 418, § 2, eff from and after July 1, 2011.

Cross References — Employment of certain off-duty deputy sheriffs to seize and sell personal property, see § 27-41-103.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 18, 21-23.

72 Am. Jur. 2d, State and Local Taxation §§ 640, 643, 737-755, 771-793.

CJS. 80 C.J.S., Sheriffs and Constables §§ 259, 260.

84 C.J.S., Taxation §§ 1-3.

85 C.J.S., Taxation §§ 1109-1119.

§ 27-41-107. Collection of taxes on personal property; execution of warrant by sheriff or off-duty deputy sheriff; compensation of sheriff and off-duty deputy sheriff; manner of disposition of property.

The sheriff or off-duty deputy sheriff employed by the county tax collector, upon receipt of a warrant or a jeopardy warrant, shall immediately seize any property of the taxpayer named in the warrant, in all respects, with like effect, and in the manner prescribed by law with respect to executions of judgments, and he shall execute such warrant and return it to the tax collector, and pay to him the money collected by virtue thereof by the date specified therein, but not to exceed sixty (60) days.

The sheriff shall be entitled to the fees for his services in the same amount, and to be collected in like manner, as provided by Section 25-7-19, Mississippi Code of 1972, for like services under a writ of execution. Provided, however, that the minimum total of all such fees shall be Ten Dollars ($10.00). The off-duty deputy sheriff employed by the county tax collector shall be compensated in the manner agreed to by the county tax collector when the officer was hired.

Real property shall be disposed of according to Section 13-3-163, Mississippi Code of 1972, and personal property shall be disposed of according to Section 13-3-165, Mississippi Code of 1972. However, perishable personal property may be disposed of as provided by Section 13-3-167, Mississippi Code of 1972.

SOURCES: Laws, 1995, ch. 435, § 4; Laws, 2011, ch. 418, § 3, eff from and after July 1, 2011.

Cross References — Employment of certain off-duty deputy sheriffs to seize and sell personal property, see § 27-41-103.

ATTORNEY GENERAL OPINIONS

The sheriff's commission is computed on all money made by virtue of the execution and sale as provided by Section 25-7-19(f), however Section 27-41-107 states that the minimum total of all fees shall be ten dollars. Hollimon, July 12, 1996, A.G. Op. #96-0400.

Section 21-33-53 authorizes a municipality to use the collection of personal ad valorem taxes as set forth in Section 27-41-101 et seq., and the chief of police or his designee may exercise the powers and discharge the duties imposed upon the sheriff by Section 27-41-107 to collect municipal taxes. Cole, Feb. 14, 2003, A.G. Op. #03-0037.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 18, 21-23.

72 Am. Jur. 2d, State and Local Taxation §§ 640, 643, 754.

CJS. 80 C.J.S., Sheriffs and Constables §§ 259, 260.

84 C.J.S., Taxation §§ 1-3.

85 C.J.S., Taxation §§ 1127, 1128.

§ 27-41-109. Collection of taxes on personal property; procedure where proceeds of sale of property not sufficient to satisfy claim for taxes.

Whenever any property, personal or real, which is seized and sold by virtue of Sections 27-41-101 through 27-41-109, is not sufficient to satisfy the claim of the county for which distraint or seizure is made, the tax collector may, thereafter, and as often as the same may be necessary, issue alias warrants or have issued alias writs of execution authorizing the sheriff or an off-duty deputy sheriff employed by the county tax collector to proceed to seize and sell in like manner any other property liable to seizure of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

SOURCES: Laws, 1995, ch. 435, § 5; Laws, 2011, ch. 418, § 4, eff from and after July 1, 2011.

Cross References — Employment of certain off-duty deputy sheriffs to seize and sell personal property, see § 27-41-103.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 18, 21-23.

72 Am. Jur. 2d, State and Local Taxation §§ 640, 643.

CJS. 80 C.J.S., Sheriffs and Constables §§ 259, 260.

84 C.J.S., Taxation §§ 1-3.

85 C.J.S., Taxation §§ 1170-1173.

CHAPTER 43

Ad Valorem Taxes—Notice of Tax Sale to Owners and Lienors

Sec.
27-43-1. Notice to owners.
27-43-3. Notice to owners; service of notice; fees.
27-43-4. Notice, affidavits or certificates, and fees where lands sold for nonpayment of municipal taxes.
27-43-5. Notice to lienors.
27-43-7. Notice to lienors; service.
27-43-9. Liens; entry and certification.
27-43-11. Liens; fees of clerk; failure to give notice.

§ 27-43-1. Notice to owners.

The clerk of the chancery court shall, within one hundred eighty (180) days and not less than sixty (60) days prior to the expiration of the time of redemption with respect to land sold, either to individuals or to the state, be required to issue notice to the record owner of the land sold as of one hundred eighty (180) days prior to the expiration of the time of redemption, in effect following, to wit:

"State of Mississippi, To ________________,
County of ________________

You will take notice that ________ (here describe lands) ________ lands assessed to you or supposed to be owned by you, was, on the ________ day of ________ sold to ________ for the taxes of ________ year ________, and that the title to said land will become absolute in ________ unless redemption from said tax sale be made on or before ________ day of ________.

This ________ day of ________ 2____

________________ Clerk."

SOURCES: Codes, 1892, § 3818; 1906, § 4333; Hemingway's 1917, § 6967; 1930, § 3257; 1942, § 9941; Laws, 1922, ch. 241; Laws, 1975, ch. 517, § 1, eff from and after October 1, 1975.

Cross References — Application of this section when lands are sold for nonpayment of municipal taxes, see § 27-43-4.

Redemption from tax sale, see § 27-45-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. Clerk's failure to give prescribed notice.

1. In general.

"Clerk" referred to in Miss. Code Ann. § 27-43-3 is the chancery clerk. Rush v. Wallace Rentals, LLC, 837 So. 2d 191 (Miss. 2003).

A chancery clerk did not have the legal authority to execute a tax deed on property where the creditor, who was responsible for paying the taxes on the property, was ready, willing and able to pay the cost of redemption and would have paid the delinquent taxes if the clerk had not erroneously informed the creditor that someone had already redeemed those taxes.

Merritt v. Magnolia Federal Bank for Sav., 573 So. 2d 746 (Miss. 1990).

When property is sold for unpaid county or municipal ad valorem taxes, the property owner must be given notice of his right to redeem the property within 180 days of, but no less than 60 days prior to, the expiration of the redemption period, and both the chancery clerk and the municipal clerk must provide notice in accordance with § 27-43-3. DeWeese Nelson Realty, Inc. v. Equity Servs. Co., 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

Even if a tax deed had been defective or void for failure to advertise the tax sale or to give the landowner notice as to redemption, it would still have operated as color of title and formed a sufficient basis upon which adverse possession could ripen into title, and since defendants had admittedly deprived the complainant of possession of land for considerably more than ten years prior to the complainant's action for confirmation of title, the complainant could not prevail. Trotter v. Roper, 229 Miss. 784, 92 So. 2d 230 (1957).

A municipality which allegedly was permitted to redeem lands sold for state and county taxes by virtue of statute was not entitled to notice of tax sale required by statutes to be sent by clerk of chancery court to owners and to holders of liens. City of Jackson v. Nunn, 178 Miss. 665, 174 So. 578 (1937).

2. Clerk's failure to give prescribed notice.

Bank's lien on land sold at a tax sale remained intact because (1) it was found that notice to the land's owner of the sale was defective, rendering the sale void ab initio as to both the owner and the bank and placing the parties in the positions the parties would have occupied had the sale not occurred, and (2) the bank's failure to immediately assert the bank's rights to enforce the lien, upon receiving notice of expiration of the redemption period, did not equitably estop the bank from enforcing the lien. Cleveland v. Deutche Bank Nat'l Trust Co., 207 So. 3d 710 (Miss. Ct. App. 2016), writ of certiorari denied by 207 So. 3d 1239, 2017 Miss. LEXIS 12 (Miss. Jan. 12, 2017).

Chancery court properly granted the current owners' motion for summary judgment in the tax sale purchasers' action to confirm the tax sales of the properties at issue because the former owners did not receive timely notice of the sale and the published notice did not name all of the former owners. High Sierra Tax Sale Props., LLC v. Daley, 188 So. 3d 1224 (Miss. Ct. App. 2015), writ of certiorari denied by 188 So. 3d 575, 2016 Miss. LEXIS 170 (Miss. Apr. 21, 2016).

Summary judgment quieting title in a purchaser was improper, as a city was entitled to notice of the expiration of the right of redemption before a tax sale pursuant to Miss. Code Ann. § 27-43-1; it had a reversionary interest in the property that was stated plainly on the face of a quitclaim deed, and as it did not receive such notice, the tax sale was void. City of Jackson v. Rebuild Am., Inc., 77 So. 3d 1105 (Miss. Ct. App. 2011), writ of certiorari denied en banc by 78 So. 3d 906, 2012 Miss. LEXIS 27 (Miss. 2012).

In a case in which a lienholder appealed a chancery court's refusal to set aside a tax sale, the attempted notice to the lienholder was invalid since the chancery court clerk did not without equivocation advise the lienholder that it had a specific interest which required its attention, as required by Miss. Code Ann. §§ 27-43-1 and 27-43-5. Green Tree Servicing, LLC v. Dukes, 25 So. 3d 399 (Miss. Ct. App. 2009).

Appellate court affirmed a trial court's judgment that set aside a tax sale because a chancery clerk did not comply with Miss. Code Ann. § 27-43-3, and thus appellate court held that the individual did not receive the required notice under Miss. Code Ann. § 27-43-1. Norwood v. Moore, 932 So. 2d 63 (Miss. Ct. App. 2006).

When trial court determined that landowners had not received notice of the expiration of the redemption period to redeem their land, which was sold in a tax sale, and there was no record of the clerk and the sheriff having served the statutorily required notice, the trial court did not err in voiding the tax sale to the tax sale purchaser. Alexander v. Womack, 857 So. 2d 59 (Miss. 2003).

In an action by former landowners seeking to redeem property sold at a tax sale, the trial court improperly set aside the tax sale and gave the landowners 60 days to redeem the property, where the chancery clerk used reasonable diligence in his efforts to ascertain the landowners' address, as required by this section, even though a search of records in the tax assessor's office would have revealed their current address, where the clerk sent a notice by certified mail to the former address provided by the assessor's office, which notice was returned with no forwarding address, where the clerk then inquired of the long distance directory assistance to ascertain a forwarding address but none was found, and where the landowners made no effort to pay the taxes or to supply a forwarding address; the valid tax sale vested title in the purchaser. Rains v. Teague, 377 So. 2d 924 (Miss. 1979).

In an action to remove clouds, cancel deeds, and confirm tax title to a certain lot, the chancellor correctly dismissed the bill of complaint and confirmed tax title in defendant, who had previously purchased the lot at a tax sale, even though neither the owners of the land at the time of the sale nor the lienholders had been served with notice that defendant's tax title would mature in 60 days, unless redeemed; the failure to give such notice did not render the tax title void since, at the time the property in question was assessed and the sale for delinquent taxes was held, there was no statutory requirement for such notice in municipal tax sales. Associates Capital Corp. v. Alexander, 374 So. 2d 218 (Miss. 1979).

A mistake made by the clerk in giving notice to the reputed owner that the tax title would become absolute unless the land was redeemed on or before September 18, 1953, instead of September 17, 1953, did not invalidate the tax sale, in view of statute providing that failure to give statutory notice shall not affect or render title void. Gray v. Covington, 238 Miss. 674, 119 So. 2d 615 (1960).

It is a question for the jury whether the clerk knew who the owners of the land were where person assessed therewith was dead, in a suit against the chancery clerk for damages for failure to give notice required under this section [Code 1942, § 9941]. State ex rel. Thomas v. Wray, 117 Miss. 566, 78 So. 360 (1918).

In such case it is held that the clerk must affirmatively show that he did not know the facts as to ownership of said land as shown by the will of the deceased owner on file in his office. State ex rel. Thomas v. Wray, 117 Miss. 566, 78 So. 360 (1918).

A chancery clerk failing to give the prescribed notice is liable to defaulting taxpayer for actual damages resulting to him and the right of recovery is not barred in one year, the damages being no part of the penalty provided by the statute. McClendon v. Whitten, 95 Miss. 124, 48 So. 964 (1909).

ATTORNEY GENERAL OPINIONS

Sections 27-43-1 and 27-43-3 require the chancery clerk to give notice to the record owner of the property that the time of redemption is about to expire. Jones, September 27, 1996, A.G. Op. #96-0629.

Because the statute provides that the clerk of the chancery court must give notice within 180 days and not less than 60 days prior to the expiration of the period of redemption with respect to land sold for taxes, and because the notice requirement applies to all record owners of the land and lienholders, a federal agency has an opportunity to protect its interest in the land sold for taxes before the period of redemption expires; thus, maturity of property into the state extinguishes a federal tax lien and any enrolled judgment liens owed by a prior owner of the property to the state. Lawrence, Nov. 2, 2001, A.G. Op. #01-0389.

The board of supervisors may declare void the chancery clerk's conveyance at a tax sale where the current landowner had not received the notice as required by § 27-43-1. Yancey, Sept. 6, 2002, A.G. Op. #02-0485.

RESEARCH REFERENCES

ALR. Validity, construction, and effect of statutory provision for tax lien on property not belonging to taxpayer but used in his business. 84 A.L.R.2d 1090.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 A.L.R.4th 447.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 920 et seq.

17 Am. Jur. Legal Forms 2d, State and Local Taxation § 238:54 (notice of sale of real property for unpaid taxes).

17 Am. Jur. Legal Forms 2d, State and Local Taxation §§ 238:71, 238:72.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 251(notice of expiration of time for redemption).

CJS. 85 C.J.S., Taxation §§ 1399, 1400, 1405, 1406 et seq.

§ 27-43-3. Notice to owners; service of notice; fees.

The clerk shall issue the notice to the sheriff of the county of the reputed owner's residence, if he is a resident of the State of Mississippi, and the sheriff shall be required to serve notice as follows:

(a) Upon the reputed owner personally, if he can be found in the county after diligent search and inquiry, by handing him a true copy of the notice;

(b) If the reputed owner cannot be found in the county after diligent search and inquiry, then by leaving a true copy of the notice at his usual place of abode with the spouse of the reputed owner or some other person who lives at his usual place of abode above the age of sixteen (16) years, and willing to receive the copy of the notice; or

(c) If the reputed owner cannot be found after diligent search and inquiry, and if no person above the age of sixteen (16) years who lives at his usual place of abode can be found at his usual place of abode who is willing to receive the copy of the notice, then by posting a true copy of the notice on a door of the reputed owner's usual place of abode.

The sheriff shall make his return to the chancery clerk issuing the notice. The clerk shall also mail a copy of the notice to the reputed owner at his usual street address, if it can be ascertained after diligent search and inquiry, or to his post-office address if only that can be ascertained, and he shall note such action on the tax sales record. The clerk shall also be required to publish the name and address of the reputed owner of the property and the legal description of the property in a public newspaper of the county in which the land is located, or if no newspaper is published as such, then in a newspaper having a general circulation in the county. The publication shall be made at least forty-five (45) days prior to the expiration of the redemption period.

If the reputed owner is a nonresident of the State of Mississippi, then the clerk shall mail a copy of the notice to the reputed owner in the same manner as set out in this section for notice to a resident of the State of Mississippi, except that notice served by the sheriff shall not be required.

Notice by mail shall be by registered or certified mail. In the event the notice by mail is returned undelivered and the notice as required in this section to be served by the sheriff is returned not found, then the clerk shall make further search and inquiry to ascertain the reputed owner's street and post-office address. If the reputed owner's street or post-office address is ascertained after the additional search and inquiry, the clerk shall again issue notice as set out in this section. If notice is again issued and it is again returned not found and if notice by mail is again returned undelivered, then the clerk shall file an affidavit to that effect and shall specify in the affidavit the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post-office address and the affidavit shall be retained as a permanent record in the office of the clerk and that action shall be noted on the tax sales record. If the clerk is still unable to ascertain the reputed owner's street or post-office address after making search and inquiry for the second time, then it shall not be necessary to issue any additional notice but the clerk shall file an affidavit specifying the acts of search and inquiry made by him in an effort to ascertain the reputed owner's street and post-office address and the affidavit shall be retained as a permanent record in the office of the clerk and that action shall be noted on the tax sale record.

For examining the records to ascertain the record owner of the property, the clerk shall be allowed a fee of Fifty Dollars ($50.00); for issuing the notice the clerk shall be allowed a fee of Two Dollars ($2.00) and, for mailing the notice and noting that action on the tax sales record, a fee of One Dollar ($1.00); and for serving the notice, the sheriff shall be allowed a fee of Thirty-five Dollars ($35.00). For issuing a second notice, the clerk shall be allowed a fee of Five Dollars ($5.00) and, for mailing the notice and noting that action on the tax sales record, a fee of Two Dollars and Fifty Cents ($2.50), and for serving the second notice, the sheriff shall be allowed a fee of Thirty-five Dollars ($35.00). The clerk shall also be allowed the actual cost of publication. The fees and cost shall be taxed against the owner of the land if the land is redeemed, and if not redeemed, then the fees are to be taxed as part of the cost against the purchaser. The failure of the landowner to actually receive the notice herein required shall not render the title void, provided the clerk and sheriff have complied with the duties prescribed for them in this section.

Should the clerk inadvertently fail to send notice as prescribed in this section, then the sale shall be void and the clerk shall not be liable to the purchaser or owner upon refund of all purchase money paid.

SOURCES: Codes, 1892, § 3818; 1906, § 4333; Hemingway's 1917, § 6967; 1930, § 3258; 1942, § 9942; Laws, 1922, ch. 241; Laws, 1968, ch. 514, § 1; Laws, 1975, ch. 517, § 2; Laws, 1981, ch. 375, § 1; Laws, 1995, ch. 468, § 12; Laws, 2007, ch. 364, § 1; Laws, 2013, ch. 365, § 1, eff from and after July 1, 2013.

Cross References — Application of this section when lands are sold for nonpayment of municipal taxes, see § 27-43-4.

JUDICIAL DECISIONS

1. In general.
2. Failure of clerk to give prescribed notice.
3. Sufficiency of affidavit.
4. Failure to Serve Personally.

1. In general.

Appellate court affirmed trial court's judgment in favor of an individual that set aside a tax deed because a chancery clerk did not comply with Miss. Code Ann. § 27-43-3 in that she failed to file a second affidavit that detailed the steps she took to advise the individual of the expiration of his rights of redemption. Norwood v. Moore, 932 So. 2d 63 (Miss. Ct. App. 2006).

A complaint to confirm a tax deed to realty was properly dismissed for failure to substantially comply with the applicable process statutes or § 27-43-3, where the owners of the property were never mailed a copy of the summons served by the deputy sheriff, the clerk gave public notice only 43 days, rather than 45 days, prior to expiration of the redemption period, and the notice was fatally defective in attempting to serve both owners with a single notice. Brown v. Riley, 580 So. 2d 1234 (Miss. 1991).

When property is sold for unpaid county or municipal ad valorem taxes, the property owner must be given notice of his right to redeem the property within 180 days of, but no less than 60 days prior to, the expiration of the redemption period, and both the chancery clerk and the municipal clerk must provide notice in accordance with § 27-43-3. DeWeese Nelson Realty, Inc. v. Equity Servs. Co., 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

When construed together, §§ 27-41-55 and 27-43-3 require notice to be given by personal service, mail, and publication before a landowner's rights are finally extinguished by the maturing of a tax deed. DeWeese Nelson Realty, Inc. v. Equity Servs. Co., 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

On record which showed that corporate landowner had actually received tax redemption notice by mail and by personal service before its property interest was extinguished by the maturing of a tax deed, the corporation was not deprived of its property interest without due process of law. DeWeese Nelson Realty, Inc. v. Equity Servs. Co., 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

Municipality redeeming land sold for state and county taxes, held not entitled to notice required to be sent to owners and holders of liens. City of Jackson v. Nunn, 178 Miss. 665, 174 So. 578 (1937).

2. Failure of clerk to give prescribed notice.

Bank's lien on land sold at a tax sale remained intact because (1) it was found that notice to the land's owner of the sale was defective, rendering the sale void ab initio as to both the owner and the bank and placing the parties in the positions the parties would have occupied had the sale not occurred, and (2) the bank's failure to immediately assert the bank's rights to enforce the lien, upon receiving notice of expiration of the redemption period, did not equitably estop the bank from enforcing the lien. Cleveland v. Deutche Bank Nat'l Trust Co., 207 So. 3d 710 (Miss. Ct. App. 2016), writ of certiorari denied by 207 So. 3d 1239, 2017 Miss. LEXIS 12 (Miss. Jan. 12, 2017).

Trial court erred in dismissing a tax-sale purchaser's complaint for lack of standing because the trial clerk's failure to comply with the statutory notice requirements rendered the tax sale void, the purchaser held an interest in the property as a statutory lienholder, which gave it standing to challenge the trial clerk's compliance with the notice statutes, and the doctrine of caveat emptor did not bar the purchaser's suit, as the tax-sale statutes specifically provided for the remedy the purchaser sought. Sass Muni-V, LLC v. Desoto County, 170 So. 3d 441 (Miss. 2015).

Chancery clerk failed to strictly adhere to the statutory notice requirements regarding the expiration of a redemption period when the clerk properly treated an unclaimed notice sent to the property owner as "undelivered" but neglected to produce affidavits documenting subsequent efforts to locate the owner. Davis v. Tiblier, 107 So. 3d 181 (Miss. Ct. App. 2013).

In a grantee's action against a chancery clerk and a county sheriff to recover damages for their failure to strictly comply with the notice requirements of Miss. Code Ann. § 27-43-3, the trial court correctly held that whether the alleged conduct was "inadvertent" was irrelevant to whether the grantee's claims were precluded by the doctrine of caveat emptor; instead, the relevant question is whether there was a statutory remedy against the chancery clerk or the sheriff because recovery was otherwise barred by caveat emptor, and Miss. Code Ann. § 27-43-3 did not create one. Rebuild Am., Inc. v. Johnson, 99 So. 3d 1154 (Miss. Ct. App. 2010).

Trial court did not err in dismissing a grantee's action against a chancery clerk and a county sheriff to recover damages for their failure to strictly comply with the notice requirements of Miss. Code Ann. § 27-43-3 because the grantee failed to identify any statutory remedy allowing it to recover against the chancery clerk and the sheriff; no remedy exists to the purchaser in an invalid tax sale unless a remedy is specifically created by statute, and that § 27-43-3 creates an exception to liability does not create liability in the absence of the exception. Rebuild Am., Inc. v. Johnson, 99 So. 3d 1154 (Miss. Ct. App. 2010).

Chancellor did not err in finding that the chancery clerk failed to comply with the notice procedure of a tax sale pursuant to Miss. Code Ann. § 27-43-3 because leaving a copy of the notice attached to an outer door of a structure on the subject property was insufficient to satisfy the personal service requirement of § 27-43-3, and the record contained only a single affidavit, which was unsworn, concerning a single search and inquiry; under a strict reading of § 27-43-3, the chancery clerk's affidavit cannot be a substitute for personal service where notice by mail was completed. Rebuild Am., Inc. v. Estate of Wright, 27 So. 3d 1202 (Miss. Ct. App. 2010).

In a case in which a lienholder appealed a chancery court's refusal to set aside a tax sale, the attempted notice to the lienholder was invalid since the chancery court clerk did not without equivocation advise the lienholder that it had a specific interest which required its attention, as required by Miss. Code Ann. §§ 27-43-1 and 27-43-5. Green Tree Servicing, LLC v. Dukes, 25 So. 3d 399 (Miss. Ct. App. 2009).

Chancellor properly set aside a tax sale of property because the property owners, a husband and wife, did not receive adequate notice of the sale; the chancery clerk failed to give notice to the wife individually. The husband, by signing for the certified letter, was the only owner to receive notice. Rebuild Am., Inc. v. Milner, 7 So. 3d 972 (Miss. Ct. App. 2009).

Voiding of the purchaser's purchase of real estate was proper because the chancery clerk failed to comply with the statutory notice requirement contained in Miss. Code Ann. § 27-43-3. Taking the clerk's affidavit as true, the chancery clerk's office did not heed the admonition concerning the appropriate documentation to verify the due diligence exercised by the chancery clerk's office in attempting to locate the property owner after a tax sale, but prior to the redemption deadline. Reed v. Florimonte, 987 So. 2d 967 (Miss. 2008).

Chancery court erred in finding that the chancery clerk had complied with the statutory requirements of Miss. Code Ann. § 27-43-3 where the clerk did not comply with notice requirements in her efforts to locate the owner of the disputed property; thus, the owner gained interest in the disputed property which gave him standing to bring a claim to challenge the validity of the tax sale. Moore v. Marathon Asset Mgmt., LLC, 973 So. 2d 1017 (Miss. Ct. App. 2008).

Tax sale of property was void because the three methods of service under Miss. Code Ann. § 27-43-3 were not satisfied; although two methods were completed, posting a notice of redemption on the owner's business was not one of the acceptable methods under Miss. R. Civ. P. 4. Viking Invs.,LLC v. Addison Body Shop, Inc., 931 So. 2d 679 (Miss. Ct. App. 2006).

Chancellor erred in setting aside the entire tax sale because certain necessary parties (those persons having ownership interests) were not before the court, and the court of appeals erred in affirming the chancellor's judgment in its entirety. Curtis v. Carter, 906 So. 2d 758 (Miss. 2005).

Chancellor erred in setting aside the entire tax sale because certain necessary parties (those persons having ownership interests) were not before the court, and the court of appeals erred in affirming the chancellor's judgment in its entirety. Curtis v. Carter, 906 So. 2d 758 (Miss. 2005).

After tax sale, service by certified mail was attempted, sheriff conducted a diligent search, and notice in the newspaper was published; however, the chancery clerk failed to file the supporting affidavits required by Miss. Code Ann. § 27-43-3 statute where personal notice was returned undelivered, and that failure rendered the tax deed to the tax sale purchaser void. Lawrence v. Rankin, 870 So. 2d 673 (Miss. Ct. App. 2004).

Chancery clerk did not meet the statutory notice requirements after the first attempt to notify the nonresident reputed landowner by mail was returned undelivered because there was no affidavit from any person who actually undertook further search and inquiry to determine an appropriate address for the nonresident landowner; additionally, had further search and inquiry been conducted, the clerk might have given the resident landowner notice under the resident provisions, as she had previously filed an application for a homestead exemption showing that she resided at the subject property. Roach v. Goebel, 856 So. 2d 711 (Miss. Ct. App. 2003).

When trial court determined that landowners had not received notice of the expiration of the redemption period to redeem their land, which was sold in a tax sale, and there was no record of the clerk and the sheriff having served the statutorily required notice, the trial court did not err in voiding the tax sale to the tax sale purchaser. Alexander v. Womack, 857 So. 2d 59 (Miss. 2003).

Where the record title holder's true address was never on the quitclaim deed because the record title holder's cousin purchased the property in the record title holder's name and the record title holder intentionally gave the record title holder's daughter's address instead of the record title holder's own address; the tax sale was valid in spite of the failure of the clerk to send notice of the tax sale to the record title holder's address, the tax deed properly vested title in the purchaser at the tax sale, the purchaser's subsequent quitclaim deed to the buyers was valid, all clouds upon the title to the property were removed and canceled, and the title to the property was properly vested in the buyers. Rush v. Wallace Rentals, LLC, 837 So. 2d 191 (Miss. 2003).

Even though corporate landowner's address for service of process was on file with the Secretary of State, corporation was not entitled to set aside tax deeds on the ground that the municipal clerk had failed to conduct a diligent search to ascertain the corporation's correct address, where the municipal clerk mailed the tax redemption notice to the address of the ex-wife of the corporation's president, the ex-wife took delivery and mailed delivery receipt back to the clerk, and the notice delivered by the sheriff's office bore the same address as the mailed notice. DeWeese Nelson Realty, Inc. v. Equity Servs. Co., 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

In an action by the holder of a tax deed to confirm his title to property and a cross-bill by the original owner to cancel the tax deed, the deed would be cancelled where the Chancery Clerk had failed to comply with the statute in that the search for the original owner's proper mailing address had not been diligent and thorough and the required affidavit specifying the acts of search and inquiry made by the clerk had not been filed of record or noted in the tax sale record. Hart v. Catoe, 390 So. 2d 1001 (Miss. 1980).

In an action to remove clouds, cancel deeds, and confirm tax title to a certain lot, the chancellor correctly dismissed the bill of complaint and confirmed tax title in defendant, who had previously purchased the lot at a tax sale, even though neither the owners of the land at the time of the sale nor the lienholders had been served with notice that defendant's tax title would mature in 60 days, unless redeemed; the failure to give such notice did not render the tax title void since, at the time the property in question was assessed and the sale for delinquent taxes was held, there was no statutory requirement for such notice in municipal tax sales. Associates Capital Corp. v. Alexander, 374 So. 2d 218 (Miss. 1979).

The enrolling of taxpayer's property by a city on its assessment roll and subsequent sale for nonpayment of taxes without mailing notice to the taxpayer, when his usual street and mailing address was readily available, was an excuse for nonpayment of the tax so as to permit the taxpayer to redeem his property upon payment of the taxes, damages and interest. Kron v. Van Cleave, 339 So. 2d 559 (Miss. 1976).

A mistake made by the clerk in giving notice to the reputed owner that the tax title would become absolute unless the land was redeemed on or before September 18, 1953, instead of September 17, 1953, did not invalidate the tax sale, in view of statute providing that failure to give statutory notice shall not affect or render title void. Gray v. Covington, 238 Miss. 674, 119 So. 2d 615 (1960).

Even if a tax deed had been defective or void for failure to advertise the tax sale or to give the land owner notice as to redemption, it would still have operated as color of title and formed a sufficient basis upon which adverse possession could ripen into title, and since defendants had admittedly deprived the complainant of possession of land for considerably more than ten years prior to the complainant's action for confirmation of title, the complainant could not prevail. Trotter v. Roper, 229 Miss. 784, 92 So. 2d 230 (1957).

Under this section [Code 1942, § 9942] a tax sale was not void because of the failure of the chancery clerk to give notice to the owner that the lot had been sold for taxes on April 7, 1952, and that the period for redemption would expire on April 7, 1954. De Moe v. McLeod, 228 Miss. 481, 87 So. 2d 906 (1956), error overruled, 228 Miss. 491, 89 So. 2d 730 (1956).

The failure of the clerk to give notice to a lienor or to note on the record that it was given in the manner prescribed by statute, renders the tax sale void as to such lienor only, but the failure to give such notice to the owner of the land does not affect the validity of sale. Santa Cruz v. State, 223 Miss. 617, 78 So. 2d 900 (1955).

Where a holder of a trust deed prior to the tax sale of land acquired equity of redemption from the maker of the trust deed, there was a merger of the lesser estate in the greater, and the holder of the deed received sole title to the premises and was no longer a lienor and was not entitled to notice of expiration of time of redemption as required by statute, and a failure of the clerk to give notice did not render the tax sale void. Santa Cruz v. State, 223 Miss. 617, 78 So. 2d 900 (1955).

3. Sufficiency of affidavit.

Chancellor erred in granting summary judgment in favor of the purchaser of a property at a tax sale when the owner challenged the sale; the tax sale was void for failure to comply with Miss. Code Ann. § 27-43-3 in that an affidavit filed by a deputy chancery clerk was neither sworn to or notarized and thus, it was merely a piece of pater with the word "affidavit" as its title. Johnson v. Ferguson, 58 So. 3d 711 (Miss. Ct. App. 2011).

4. Failure to Serve Personally.

Tax deeds were invalid because the former property owners had been served with notice by publication of the end of the redemption period but had not been served personally by the sheriff, as required by Miss. Code Ann. § 27-43-3 (2002). However, the tax sale purchaser's successor remained entitled to statutory damages under Miss. Code Ann. § 27-45-3 (Rev. 2006). Rebuild Am., Inc. v. McGee, 49 So. 3d 156 (Miss. Ct. App. 2010).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 27-43-3 provides that sheriff shall be allowed fee of $4 for serving notice of tax sale required by Miss. Code Section 27-43-1. Robinson, May 12, 1993, A.G. Op. #93-0312.

Four dollar fee for service of tax sales notices is to be applied under Miss. Code § 27-43-3 which is more specific than Miss. Code Section 25-7-19. Robinson, May 12, 1993, A.G. Op. #93-0312.

Salaried employee of municipality, such as city clerk, may not receive in individual capacity fees collected pursuant to ad valorem tax sales nor may police officer receive fees set forth for sheriff for service of tax sale notices. Hayslett, Jan. 12, 1994, A.G. Op. #93-0961.

Sections 27-43-1 and 27-43-3 require the chancery clerk to give notice to the record owner of the property that the time of redemption is about to expire. Jones, September 27, 1996, A.G. Op. #96-0629.

The notice provisions of Miss. Code Section 27-43-3 may be used as a guideline by tax collectors in satisfying the requirements of Miss. Code Section 27-41-101. Heard, August 28, 1998, A.G. Op. #98-0534.

Where there is a failure to comply with the notice requirements of this section, it is the right of a private landowner to file a suit to have the tax deed declared void. A city as an interested party does have standing to initiate and participate in a lawsuit to declare tax deeds void. Scafide, Nov. 5, 2004, A.G. Op. 04-0530.

RESEARCH REFERENCES

ALR. Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 A.L.R.4th 447.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 929.

CJS. 85 C.J.S., Taxation § 1423 et seq.

§ 27-43-4. Notice, affidavits or certificates, and fees where lands sold for nonpayment of municipal taxes.

With respect to lands sold for the nonpayment of municipal taxes, both for ad valorem and for special improvements, the municipal clerk shall issue the same type notices and perform all other requirements as set forth in Sections 27-43-1 through 27-43-11, inclusive, and for so doing, the municipality shall be allowed the same fees as set forth in said sections. However, all certificates or affidavits of the municipal clerk shall be filed with the chancery clerk of the county in which the municipality is located for which the chancery clerk shall be allowed a filing fee of One Dollar ($1.00) per affidavit or certificate.

SOURCES: Laws, 1975, ch. 517, § 3; Laws, 1978, ch. 419, § 1, eff from and after July 1, 1978.

Cross References — Sales for nonpayment of municipal taxes generally, see § 21-33-63.

JUDICIAL DECISIONS

1. In general.

Although it was undisputed that the tax sale buyer received a notice, it was not sent by certified mail; therefore, the chancellor was correct in setting aside the tax sale insofar as it pertained to the buyer's interests therein. Curtis v. Carter, 906 So. 2d 758 (Miss. 2005).

Trial court properly granted summary judgment in lienholders' favor setting aside the tax conveyance to the property buyer as there was no evidence that the debt owed to the lienholders had been satisfied, and the evidence showed that the city had failed to give the lienholders sufficient notice as required by Miss. Code Ann. §§ 27-43-4, 27-43-5. Curtis v. Carter, 906 So. 2d 5 (Miss. Ct. App. 2004), affirmed in part and reversed in part by, remanded by 906 So. 2d 758, 2005 Miss. LEXIS 392 (Miss. 2005).

When property is sold for unpaid county or municipal ad valorem taxes, the property owner must be given notice of his right to redeem the property within 180 days of, but no less than 60 days prior to, the expiration of the redemption period, and both the chancery clerk and the municipal clerk must provide notice in accordance with § 27-43-3. DeWeese Nelson Realty, Inc. v. Equity Servs. Co., 502 So. 2d 310 (Miss. 1986), appeal dismissed, 484 U.S. 804, 108 S. Ct. 49, 98 L. Ed. 2d 14 (1987).

In an action to remove clouds, cancel deeds, and confirm tax title to a certain lot, the chancellor correctly dismissed the bill of complaint and confirmed tax title in defendant, who had previously purchased the lot at a tax sale, even though neither the owners of the land at the time of the sale nor the lienholders had been served with notice that defendant's tax title would mature in 60 days, unless redeemed; the failure to give such notice did not render the tax title void since, at the time the property in question was assessed and the sale for delinquent taxes was held, there was no statutory requirement for such notice in municipal tax sales. Associates Capital Corp. v. Alexander, 374 So. 2d 218 (Miss. 1979).

ATTORNEY GENERAL OPINIONS

Salaried employee of municipality, such as city clerk, may not receive in individual capacity fees collected pursuant to ad valorem tax sales nor may police officer receive fees set forth for sheriff for service of tax sale notices. Hayslett, Jan. 12, 1994, A.G. Op. #93-0961.

RESEARCH REFERENCES

ALR. Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 A.L.R.4th 447.

Law Reviews. 1979 Mississippi Supreme Court Review: Miscellaneous. 50 Miss. L. J. 833, December 1979.

§ 27-43-5. Notice to lienors.

It shall be the duty of the clerk of the chancery court to examine the record of deeds, mortgages and deeds of trust in his office to ascertain the names and addresses of all mortgagees, beneficiaries and holders of vendors liens of all lands sold for taxes; and he shall, within the time fixed by law for notifying owners, send by certified mail with return receipt requested to all such lienors so shown of record the following notice, to-wit:

"State of Mississippi, To ____________,
County of ____________

"You will take notice that ________ (here describe lands) assessed to, or supposed to be owned by ________ was on the ________ day of ________, 2________, sold to ________ for the taxes of ________ (giving year) upon which you have a lien by virtue of the instrument recorded in this office in ________ Book ________, page ________, dated ________, and that the title to said land will become absolute in said purchaser unless redemption from said sale be made on or before the ______ day of May of 2______.

"This ______ day of ______, 2____.

"________________

"Chancery Clerk of ______ County, Miss."

SOURCES: Codes, 1930, § 3259; 1942, § 9943; Laws, 1922, ch. 241; Laws, 1988, ch. 478; Laws, 1995, ch. 468, § 13; Laws, 1995, ch. 381, § 1, eff from and after July 1, 1995.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last paragraph of the notice form. A blank line for the month and a comma were added. The Joint Committee ratified the correction at its May 20, 1998, meeting, and the section has been reprinted in the supplement to reflect the corrected language.

Editor's Note — Miss. Code Ann. § 27-43-5 requires a chancery clerk to examine the records of deeds, mortgages and deeds of trust in his office for a period of six (6) years to determine the names and addresses of all mortgagees, beneficiaries and holders of vendors lanes of land to be sold for taxes. This statute makes no provision for person who have liens that have been in existence for more than six (6) years. In the U.S. Supreme Court case of Mennonite Board of Missions v. Adams, (1983) 462 U.S. 791, 77 LEd2d 180, 103 S. Ct. 2706, the U.S. Supreme Court stated "since a mortgagee clearly has a legally protected property interest, he is entitled to notice reasonably calculated to apprise him of a pending tax sale." When the mortgagee is identified and a mortgage is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address or by personal service. The Mississippi Supreme Court in the case of Deweese Nelson Realty Inc. v. Equity Services Company, (1986, Miss) 502 So. 2d 310 cited Mennonite Board of Missions v. Adams, supra, with favor. The Court suggested that the legislature consider the statutory procedure for notice of tax sales in light of Mennonite Board.

For purchasers at tax sales to cut-off existing lienholders over six (6) years old, there will have to be a showing that the lienholders have received actual notice of the pending tax sale. This issue has come up in several cases involving the U.S. Department of Agriculture and more such cases are expected if the chancery clerks do no notify all lienholders of record and not just those whose liens are six (6) years old or less.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application, generally.
3. Failure of clerk to give notice.

1. Validity.

Statute requiring clerk to give lienholders notice that land covered by liens was sold for taxes held valid when applied to sales made after enactment. Everett v. Williamson, 163 Miss. 848, 143 So. 690 (1932).

2. Construction and application, generally.

Tax sale was void under Miss. Code Ann. § 27-43-11 as to the holder of a deed of trust where a chancery clerk failed to comply with the notice requirements of Miss. Code Ann. § 27-43-5; the notice failed to identify the holder's lien by book, page, and date. Wachovia Bank, N.A. v. Rebuild Am., Inc., 56 So. 3d 586 (Miss. Ct. App. 2011).

Where chancery clerk sends notice of tax sale by registered mail, whether or not lienor receives it does not affect validity of sale. Lamar Life Ins. Co. v. Mente & Co., 181 Miss. 479, 178 So. 89 (1938).

Legislature never intended that the notice required by these sections should be mailed to municipalities. City of Jackson v. Nunn, 178 Miss. 665, 174 So. 578 (1937).

Under statute relating to notice of tax sale which clerk of chancery court must send to lienholders, clerk is not required to seek elsewhere than in record of deeds, mortgages, and deeds of trust in his office for a period of six years prior to date of sale for names of persons holding liens on lands sold for taxes. City of Jackson v. Nunn, 178 Miss. 665, 174 So. 578 (1937).

Statute prescribing form of deed must be construed with other sections. Lamar Life Ins. Co. v. Billups, 175 Miss. 771, 169 So. 32 (1936).

In proceeding to confirm tax title, clerk's tax sale books should be made exhibits to bill, or bill should allege that required notice was given to parties whose interests are affected, so that court may see that there are no outside liens. Lamar Life Ins. Co. v. Billups, 175 Miss. 771, 169 So. 32 (1936).

State's obligation under 1922 Act, on sale of land for unpaid taxes, to notify lienholders of record since 1915 of such sale, was not impaired by 1930 Act, which required state to notify only those lienholders who recorded liens within six years prior to land sale. Reid v. Federal Land Bank, 166 Miss. 392, 148 So. 392 (1933).

At tax sale purchasers are chargeable with knowledge of statutory requirements for valid sale and must be held to have purchased subject to such statutory provisions. Everett v. Williamson, 163 Miss. 848, 143 So. 690 (1932).

3. Failure of clerk to give notice.

In a quiet title action arising from a tax sale that had been declared void as to a lienholder, where the buyer conceded that the chancery clerk had not strictly followed Miss. Code Ann. §§ 27-43-5 and 27-43-9, the chancellor correctly ruled that the tax sale was void as to a lienholder that did not receive proper notice; statutes dealing with land forfeitures for delinquent taxes should be strictly construed in favor of the landowners, and any deviation from the statutorily mandated procedure renders a sale void. SKL Invs., Inc. v. Am. Gen. Fin., Inc., 22 So. 3d 1247 (Miss. Ct. App. 2009).

In a case in which a lienholder appealed a chancery court's refusal to set aside a tax sale, the attempted notice to the lienholder was invalid since the chancery court clerk did not without equivocation advise the lienholder that it had a specific interest which required its attention, as required by Miss. Code Ann. §§ 27-43-1 and 27-43-5. Green Tree Servicing, LLC v. Dukes, 25 So. 3d 399 (Miss. Ct. App. 2009).

Trial court properly granted summary judgment in lienholders' favor setting aside the tax conveyance to the property buyer as there was no evidence that the debt owed to the lienholders had been satisfied, and the evidence showed that the city had failed to give the lienholders sufficient notice as required by Miss. Code Ann. §§ 27-43-4, 27-43-5. Curtis v. Carter, 906 So. 2d 5 (Miss. Ct. App. 2004), affirmed in part and reversed in part by, remanded by 906 So. 2d 758, 2005 Miss. LEXIS 392 (Miss. 2005).

In an action to remove clouds, cancel deeds, and confirm tax title to a certain lot, the chancellor correctly dismissed the bill of complaint and confirmed tax title in defendant, who had previously purchased the lot at a tax sale, even though neither the owners of the land at the time of the sale nor the lienholders had been served with notice that defendant's tax title would mature in 60 days, unless redeemed; the failure to give such notice did not render the tax title void since, at the time the property in question was assessed and the sale for delinquent taxes was sold, there was no statutory requirement for such notice in municipal tax sales. Associates Capital Corp. v. Alexander, 374 So. 2d 218 (Miss. 1979).

In an action involving the validity of a tax sale where trust deeds were given in consideration of cancellation of notes secured by the deeds of trust, there was a merger of the lesser estate in the greater, and trust company which received the deed became the owner of the lands and was such owner prior to the expiration of the period of redemption and the failure to give notice to the owner of land does not affect the validity of the sale. De Fraites v. State, 227 Miss. 496, 86 So. 2d 664 (1956).

The failure of the clerk to give notice to a lienor, or to note on the record that it was given in the manner prescribed by statute, renders the tax sale void as to such lienor only, but the failure to give such notice to the owner of land does not affect the validity of sale. Santa Cruz v. State, 223 Miss. 617, 78 So. 2d 900 (1955).

Tax deed to purchaser was void, where chancery clerk failed to notify lienor of sale as required under 1922 Act, where lienor recorded lien nine years prior to sale, since 1930 Act, which required that notice be given only to those lienors who recorded liens within six years of sale, was not applicable. Reid v. Federal Land Bank, 166 Miss. 392, 148 So. 392 (1933).

Chancery clerk's failure to notify prior lienors having no interest at time that land had been sold for taxes did not avoid tax sale. Talmadge v. Seward, 155 Miss. 580, 124 So. 791 (1929).

ATTORNEY GENERAL OPINIONS

In searching the records to determine the names and address of mortgagees pursuant to the mandatory provisions of Section 27-43-5, a clerk may rely upon the provisions of Section 89-5-19; he may consider as barred any lien which as of the date of the search appears to have been barred pursuant to the applicable statute of limitation at lease six months prior to the date of the search for the debt secured thereby; and he need not give notice of the maturity of a tax sale to any mortgagee whose lien appears to be barred. McAdams, Feb. 18, 2000, A.G. Op. #2000-0055.

A chancery clerk may not certify a tax sale that is void due to the failure to give proper notice to a lienholder. Dew, Oct. 17, 2003, A.G. Op. 03-0506.

If a tax sale cannot be certified because of failure to give notice to a lienholder, proper notice should be provided to the lienholder by compliance with this section by means of service as described in § 27-43-7, and the property should be sold at the next tax sale if the taxes are not paid. Dew, Oct. 17, 2003, A.G. Op. 03-0506.

RESEARCH REFERENCES

ALR. Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 A.L.R.4th 447.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 892, 925 et seq.

17 Am. Jur. Legal Forms 2d, State and Local Taxation §§ 238:71, 238:72.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 251(notice of expiration of time for redemption).

CJS. 85 C.J.S., Taxation §§ 1406-1416.

§ 27-43-7. Notice to lienors; service.

The notice shall be mailed to said lienors, if any, to the post-office address of the lienors, if such address is set forth in the instrument creating the lien, otherwise to the post-office address of said lienors, if actually known to the clerk, and if unknown to the clerk then addressed to the county site of the said county.

SOURCES: Codes, 1930, § 3260; 1942, § 9944; Laws, 1922, ch. 241.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application, generally.
3. Failure of clerk to give notice.

1. Validity.

Statute held valid as to sales made after enactment. Everett v. Williamson, 163 Miss. 848, 143 So. 690 (1932).

2. Construction and application, generally.

Where chancery clerk sends notice of tax sale by registered mail, whether or not lienor receives it does not affect validity of sale. Lamar Life Ins. Co. v. Mente & Co., 181 Miss. 479, 178 So. 89 (1938).

But where chancery clerk's notation on record did not show notice sent by registered mail, tax sale was void as to that lienor. Lamar Life Ins. Co. v. Mente & Co., 181 Miss. 479, 178 So. 89 (1938).

Municipality redeeming land sold for state and county taxes, held not entitled to notice required to be sent to owners and holders of liens. City of Jackson v. Nunn, 178 Miss. 665, 174 So. 578 (1937).

In proceeding to confirm tax title tax sale books should be made exhibit to the bill, or bill should allege that required notice was given to interested parties, so that court may see that there are no outside liens. Lamar Life Ins. Co. v. Billups, 175 Miss. 771, 169 So. 32 (1936).

Purchasers at tax sale held chargeable with knowledge of statutory requirements for valid sale. Everett v. Williamson, 163 Miss. 848, 143 So. 690 (1932).

3. Failure of clerk to give notice.

Chancellor properly set aside a tax sale of property because the lien holder of the property, a bank, did not receive proper notice; the notice of the sale was mailed to the wrong address for the bank. Rebuild Am., Inc. v. Milner, 7 So. 3d 972 (Miss. Ct. App. 2009).

In an action involving the validity of a tax sale where trust deeds were given in consideration of cancellation of notes secured by the deeds of trust, there was a merger of the lesser estate in the greater, and trust company which received the deed became the owner of the lands and was such owner prior to the expiration of the period of redemption and the failure to give notice to the owner of land does not affect the validity of the sale. De Fraites v. State, 227 Miss. 496, 86 So. 2d 664 (1956).

The failure of the clerk to give notice to a lienor or to note on the record that it was given in the manner prescribed by statute, renders the tax sale void as to such lienor only, but the failure to give such notice to the owner of the land does not affect the validity of sale. Santa Cruz v. State, 223 Miss. 617, 78 So. 2d 900 (1955).

Where a holder of a trust deed prior to the tax sale of land acquired equity of redemption from the maker of the trust deed, there was a merger of the lesser estate in the greater, and the holder of the deed received sole title to the premises and was no longer a lienor and was not entitled to notice of expiration of time of redemption as required by statute, and a failure of the clerk to give notice did not render the tax sale void. Santa Cruz v. State, 223 Miss. 617, 78 So. 2d 900 (1955).

ATTORNEY GENERAL OPINIONS

If a tax sale cannot be certified because of failure to give notice to a lienholder, proper notice should be provided to the lienholder by compliance with § 27-43-5 by means of service as described in this section, and the property should be sold at the next tax sale if the taxes are not paid. Dew, Oct. 17, 2003, A.G. Op. 03-0506.

RESEARCH REFERENCES

ALR. Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45

A.L.R.4th 447.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 928, 929.

CJS. 85 C.J.S., Taxation § 1423 et seq.

§ 27-43-9. Liens; entry and certification.

Upon completing the examination for said liens, the clerk shall enter upon the tax sale book upon the page showing the sale a notation to the effect that such examination had been made, giving the names and addresses, if known, of said lienors, the book and page where the liens are created, and the date of mailing by registered mail the notice to the lienors. If the clerk finds no liens of record, he shall so certify on said tax sale book. In each instance the clerk shall date the certificate and sign his name thereto.

SOURCES: Codes, 1930, § 3261; 1942, § 9945; Laws, 1922, ch. 241.

JUDICIAL DECISIONS

1. In general.
2. Strict Compliance Required.

1. In general.

A mere memorandum or note on the tax record page is not sufficient compliance with this section [Code 1942, § 9945], but there must be a certificate dated and signed by the clerk in accordance with the prescribed procedure. Pace v. Wedgeworth, 198 Miss. 1, 20 So. 2d 842 (1945).

A mere unsigned and undated memorandum on the tax record page, consisting of the date, "Aug. 19, 1936," apparently written or typed under a credit heading, "Notices mailed by registered mail," was not a sufficient compliance with the requirements of this section [Code 1942, § 9945] as to the chancery clerk's notation on the record showing notices sent by registered mail. Pace v. Wedgeworth, 198 Miss. 1, 20 So. 2d 842 (1945).

Where chancery clerk's notation on record does not show notice sent by registered mail to lienor as required by this section [Code 1942, § 9945], the tax sale is void as to that lienor by virtue of Code 1942, § 9946. Pace v. Wedgeworth, 198 Miss. 1, 20 So. 2d 842 (1945).

Tax sale of land which was void as to city holding a lien on the land by reason of having made a loan and having accepted assignment of a deed of trust to the land as security therefor, as authorized by law, for the reason that the chancery clerk's notation on record did not show that notice of the tax sale was sent by registered mail to the city as required by this section [Code 1942, § 9945], did not impair or destroy the city's right subsequently to convey the land, nor the right of its grantee subsequently to do the same. Pace v. Wedgeworth, 198 Miss. 1, 20 So. 2d 842 (1945).

Where chancery clerk's notation on record of mailing of notice of tax sale to lienor failed to set forth that notice was sent by registered mail, failure to comply with statute rendered tax title void as to that lienor. Lamar Life Ins. Co. v. Mente & Co., 181 Miss. 479, 178 So. 89 (1938).

But where chancery court sends notice of tax sale by registered mail, whether or not lienor receives it does not affect validity of sale. Lamar Life Ins. Co. v. Mente & Co., 181 Miss. 479, 178 So. 89 (1938).

Section prescribing form of deed must be construed with other sections. Lamar Life Ins. Co. v. Billups, 175 Miss. 771, 169 So. 32 (1936).

In proceeding to confirm tax title tax sale books should be made exhibit to the bill, or bill should allege that required notice was given to interested parties, so that court may see that there are no outside liens. Lamar Life Ins. Co. v. Billups, 175 Miss. 771, 169 So. 32 (1936).

2. Strict Compliance Required.

In a quiet title action arising from a tax sale that had been declared void as to a lienholder, where the buyer conceded that the chancery clerk had not strictly followed Miss. Code Ann. §§ 27-43-5 and 27-43-9, the chancellor correctly ruled that the tax sale was void as to a lienholder that did not receive proper notice; statutes dealing with land forfeitures for delinquent taxes should be strictly construed in favor of the landowners, and any deviation from the statutorily mandated procedure renders a sale void. SKL Invs., Inc. v. Am. Gen. Fin., Inc., 22 So. 3d 1247 (Miss. Ct. App. 2009).

§ 27-43-11. Liens; fees of clerk; failure to give notice.

For examining the records to ascertain the names and addresses of lienors, the chancery clerk shall be allowed a fee of Seven Dollars ($7.00) in each instance for each lien where a lien is found of record, and said fees shall be taxed against the owner of said land, if same is redeemed, and if not redeemed, then said fees are to be taxed as part of the cost against the purchaser. A failure to give the required notice to such lienors shall render the tax title void as to such lienors, and as to them only, and such purchaser shall be entitled to a refund of all such taxes paid the state, county or other taxing district after filing his claim therefor as provided by law.

SOURCES: Codes, 1930, § 3262; 1942, § 9946; Laws, 1922, ch. 241; Laws, 1946, ch. 244, § 1; Laws, 1995, ch. 468, § 14, eff from and after passage (approved March 27, 1995).

Cross References — Chancery clerk's fees, see § 25-7-9.

JUDICIAL DECISIONS

1. Validity.
2. Construction and application.

1. Validity.

Statute providing that failure to give notice to lienors renders tax sale void as to lienors does not unlawfully discriminate against owners. Everett v. Williamson, 163 Miss. 848, 143 So. 690 (1932).

Statute does not unlawfully discriminate against owners. Everett v. Williamson, 163 Miss. 848, 143 So. 690 (1932).

2. Construction and application.

Trial court erred in dismissing a tax-sale purchaser's complaint for lack of standing because the trial clerk's failure to comply with the statutory notice requirements rendered the tax sale void, the purchaser held an interest in the property as a statutory lienholder, which gave it standing to challenge the trial clerk's compliance with the notice statutes, and the doctrine of caveat emptor did not bar the purchaser's suit, as the tax-sale statutes specifically provided for the remedy the purchaser sought. Sass Muni-V, LLC v. Desoto County, 170 So. 3d 441 (Miss. 2015).

Tax sale was void under Miss. Code Ann. § 27-43-11 as to the holder of a deed of trust where a chancery clerk failed to comply with the notice requirements of Miss. Code Ann. § 27-43-5; the notice failed to identify the holder's lien by book, page, and date. Wachovia Bank, N.A. v. Rebuild Am., Inc., 56 So. 3d 586 (Miss. Ct. App. 2011).

In a quiet title action arising from a tax sale that had been declared void as to a lienholder, the buyer argued that the chancellor was correct when he confirmed the tax sale, but he erred in holding that the property at issue was subject to the lien. Miss. Code Ann. § 27-43-11 provided that the failure to give the required notice to a lienholder rendered a tax title void as to such lienors, and as to them only, and that provision was interpreted to mean that the tax sale was confirmed as to all others except those lienholders who failed to receive the statutorily required notice. SKL Invs., Inc. v. Am. Gen. Fin., Inc., 22 So. 3d 1247 (Miss. Ct. App. 2009).

In a quiet title action arising from a tax sale that had been declared void as to a lienholder, the buyer argued that the chancellor erred in failing to award it damages. While Miss. Code. Ann. § 27-43-11 provided that the buyer was entitled to a refund of the taxes that it had paid, the record did not reflect that the buyer had filed for a refund as required, and Miss. Code Ann. § 27-45-27(1) did not mean that, since the tax sale was rendered void as to one lienholder, but not to others, the buyer could recover statutory damages against the non-voided lienholder. SKL Invs., Inc. v. Am. Gen. Fin., Inc., 22 So. 3d 1247 (Miss. Ct. App. 2009).

Where chancery clerk's notation on record does not show notice sent by registered mail to lienor as required by Code 1942, § 9945, the tax sale is void as to that lienor. Pace v. Wedgeworth, 198 Miss. 1, 20 So. 2d 842 (1945).

Tax sale of land which was void under this section [Code 1942, § 9946] as to city holding a lien on the land by virtue of having made a loan and having accepted assignment of a deed of trust to the land as security therefor, as authorized by law, for the reason that the chancery clerk's notation on record did not show that notice of the tax sale was sent by registered mail to the city as required by Code 1942, § 9945, did not impair or destroy the city's right to subsequently convey the land, nor the right of its grantee to subsequently do the same. Pace v. Wedgeworth, 198 Miss. 1, 20 So. 2d 842 (1945).

Where chancery clerk's notation on record did not show notice sent by registered mail, tax sale was void as to that lienor. Lamar Life Ins. Co. v. Mente & Co., 181 Miss. 479, 178 So. 89 (1938).

As regards question as to whether tax deed vests perfect title to lands, statute prescribing form of deed must be construed with other sections, particularly provision that failure to give notice to lienors renders tax sale void as to them. Lamar Life Ins. Co. v. Billups, 175 Miss. 771, 169 So. 32 (1936).

Failure to give lienors notice that land had been sold for taxes renders tax sale void as to lienors. Everett v. Williamson, 163 Miss. 848, 143 So. 690 (1932).

Purchasers at tax sale held chargeable with knowledge of statutory requirements for valid sale. Everett v. Williamson, 163 Miss. 848, 143 So. 690 (1932).

ATTORNEY GENERAL OPINIONS

A chancery clerk may not certify a tax sale that is void due to the failure to give proper notice to a lienholder. Dew, Oct. 17, 2003, A.G. Op. 03-0506.

CHAPTER 45

Ad Valorem Taxes—Redemption of Land Sold for Taxes

Sec.
27-45-1. Duties of chancery clerk.
27-45-3. Persons who may redeem land.
27-45-5. Deposit of redemption funds; disposition.
27-45-7. Mortgagee may redeem in part.
27-45-9. Effect of redemption of part.
27-45-11. Redemptions from municipal tax sales.
27-45-13. Redemption of lands sold by mistake.
27-45-15. Sale of land paid on by mistake.
27-45-17. Release by clerk of title to certain lands.
27-45-19. Record of state tax lands.
27-45-21. Certification by clerk of lands not redeemed.
27-45-23. Conveyances to purchasers at tax sales.
27-45-25. Duplicate of conveyance or release lost or destroyed.
27-45-27. Rights of purchaser at tax sale; effect of lien; liability of county or municipal officers to purchasers.
27-45-29. Lands sold by municipalities.

§ 27-45-1. Duties of chancery clerk.

Redemption of land sold for taxes shall be made through the chancery clerks of the respective counties. Where the land was sold to the state, the clerk, out of the amount necessary to redeem, shall first pay to the officers entitled thereto the costs, fees and damages which are allowed those officers by law in cases of lands sold to individuals; second, he shall pay the state the amount of state taxes with the interest and additional charges thereon allowed by law to the state; and, third, he shall pay to the county the sums computed in like manner which belong to the county and the various taxing districts thereof. Where the land was sold to an individual, the clerk shall pay:

(a) First, to the state the amount of state taxes with the interest and additional charges thereon allowed by law, unless same has been paid previously by the tax purchaser or some other person;

(b) Second, to the county the sums computed in like manner which belong to the county and the various taxing districts thereof, unless same has been paid previously by the tax purchaser or some other person;

(c) Third, to the county the five percent (5%) damages on the amount of the taxes for which the land was sold; and

(d) Fourth, the balance to the purchaser.

The clerk shall make his redemption settlements within twenty (20) days after the end of each month and shall make a complete report thereof to the board of supervisors. For a failure so to report or to pay over the sums to the parties entitled thereto as herein required, he shall be liable on his official bond to a penalty of one percent (1%) per month on the amount withheld. The chancery clerk shall also note each redemption on the public record of delinquent tax lands, on the day payment of taxes is made, with the date, name and the amount of redemption money paid.

SOURCES: Codes, Hemingway's 1921 Supp. § 7049b; 1930, § 3263; 1942, § 9947; Laws, 1920, ch. 231; Laws, 1932, ch. 175; Laws, 1934, ch. 197; Laws, 1994, ch. 507, § 1; Laws, 2009, ch. 546, § 8, eff from and after passage (approved Apr. 15, 2009.)

Cross References — Constitutional provision granting right of redemption from sale of land for taxes, see Miss. Const. Art. 4, § 79.

Redemption of land sold for municipal taxes, see § 21-33-61.

Tax collector's monthly report of tax collections, see § 27-29-11.

Notice of tax sale and redemption period to owners and lienors, see § 27-43-1 et seq.

Deposit and disposition of redemption funds, see § 27-45-5.

Lists of lands sold for drainage district taxes, see § 51-31-133.

JUDICIAL DECISIONS

1. In general.
2. Offer to redeem.
3. Release of land from tax sale.

1. In general.

In an action to establish ownership of, or a leasehold interest in oil, gas and other minerals on and under certain land that had been sold in a tax sale, on the ground that there had been a redemption of the property from the sale, the evidence was insufficient to invalidate defendant's tax deed where, inter alia, plaintiffs had come forward with only speculative information as to the completion of the statutorily required redemption disbursement, settlement and report; the tax sale record abstract was blank where the date of redemption, if any, was to be shown. Clement v. R.L. Burns Corp., 373 So. 2d 790 (Miss. 1979).

Where, although chancery clerk failed to note tax sale on sectional index, and purchaser at foreclosure of trust deed, for purpose of redeeming from any tax sale, examined the sectional index but found no record of a tax sale, the evidence was conflicting whether purchaser made offer at tax collector's office to redeem from any tax sale and whether he was informed by the tax collector or his deputy that there had been no tax sale, chancellor's decision that the proof was insufficient to require a cancelation of a tax deed was not manifestly wrong. Pierce v. Ford, 199 Miss. 168, 24 So. 2d 342 (1946).

No estoppel against chancery clerk by demand for a complete disclosure of all taxes due with tender thereof arose so that original tax purchaser in 1937 would prevail over a tax purchaser in 1939 to whom the tax deed had been delivered and recorded, by fact that, in response to the original tax purchaser's request in 1940 for a statement of the taxes due, the clerk rendered a statement showing taxes due amounting to a certain amount which the tax purchaser paid, where the statement purported to show only that the amount indicated included costs of redemption from the sale in 1938 and disclosed the fact of subsequent sale in 1940, and where the original tax purchaser signed acknowledgment of receipt of registered notice as to the imminence of maturity of the subsequent tax sale. Little v. Gilmore-Puckett Lumber Co., 23 So. 2d 918 (Miss. 1945).

"Redemption" connotes a change of interest in the thing to be redeemed, and a change of interest connotes a conveyance by some written instrument or by operation of law. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

Where sale for taxes is void and passes no title, there can be no redemption. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

The method of redemption is not limited to that before the chancery clerk as provided by this section [Code 1942, § 9947], but may be exercised in an equitable proceeding making a bona fide attack upon the validity of the sale. Jones v. Seward, 196 Miss. 446, 16 So. 2d 619 (1944).

Statutes allowing land to be redeemed from tax sales are to be liberally construed in favor of the person seeking to redeem. McLain v. Meletio, 166 Miss. 1, 147 So. 878 (1933).

2. Offer to redeem.

Statutes allowing land to be redeemed from tax sales are to be liberally construed in favor of the person seeking to redeem, and an owner's offer to redeem from any and all tax sales within the redemption period, with sufficient money upon his person with which to effect such redemption, includes every form of taxes and takes away from the taxing authorities the power to convey title to anyone else pursuant to tax sales from which no redemption had actually been accomplished by reason of neglect or otherwise of the custodian of the tax sale records. James v. Tax Inv. Co., 206 Miss. 605, 40 So. 2d 539 (1949).

Where an uneducated and illiterate Negro woman appeared at the office of the chancery clerk to pay the back taxes on her property and she was informed only of the most recent tax sale and not of a previous sale for delinquent tax in a prior year, her efforts to pay all back taxes, having the money on her person with which to do so, was sufficient to effect redemption and took away from the taxing authorities the power to convey the title to her property under the first tax sale. James v. Tax Inv. Co., 206 Miss. 605, 40 So. 2d 539 (1949).

Where record owner of land informed chancery clerk of desire to redeem land from tax sale, having sufficient money on his person for such purpose, but clerk referred him to the state land office, and owner conferred with the state land commissioner with the purpose either to redeem or repurchase the land from the state but commissioner informed him that it was too late to redeem the land, such acts of the owner constituted a sufficient offer of redemption. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Offer and request to redeem from tax sale, when ready and able to do so, where refused either arbitrarily or through unintentional misrepresentation of facts, deprives the state of power to convey title, and a deed subsequently issued to purchaser at tax sale is invalid. Kelly v. Coker, 197 Miss. 131, 19 So. 2d 519 (1944).

Fact that landowners went to clerk's office on two occasions carrying money to redeem land from tax sale, informing clerk that they wanted to redeem the land and that they had the money with which to do so, but on each occasion the clerk told them "there was no taxes due on the place, it had been paid," constituted a sufficient offer to redeem which rendered subsequent deed to purchaser at tax sale invalid. Kelly v. Coker, 197 Miss. 131, 19 So. 2d 519 (1944).

Taxpayer's offer to redeem from any and all tax sales covered sales for drainage assessment or taxes as well as ad valorem taxes, since the word "taxes" in its broad sense includes special or local assessments on specific property benefited by a local improvement as well as ad valorem taxes. McLain v. Meletio, 166 Miss. 1, 147 So. 878 (1933).

Where the chancery clerk informed taxpayer that there were no outstanding tax sales from which to redeem, although there had been a sale of the land for delinquent drainage taxes, taxpayer was not required to tender the money necessary to redeem the land from such tax sale, since the money would not have been received. McLain v. Meletio, 166 Miss. 1, 147 So. 878 (1933).

Taxpayer's offer to redeem within the two-year period took away from both the state and the drainage commissioners, who had purchased the land at tax sale, the power to convey title to anyone else. McLain v. Meletio, 166 Miss. 1, 147 So. 878 (1933).

3. Release of land from tax sale.

Where, after the sale of land to the state for delinquent taxes, the record owner applied to the chancery clerk for a release of the land from that sale, it was the clerk's duty to issue the release if, but not unless, he had collected from the record owner the payments required for the redemption of the land, including all taxes and costs which had accrued on the land since the sale. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

Where, after the sale of land to the state for delinquent taxes, the record owner applied to the chancery clerk for a release and the clerk neglected to collect the taxes due for 1934, such owner was not chargeable with clerk's failure in this respect unless he fraudulently participated therein. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

ATTORNEY GENERAL OPINIONS

If landowner redeems his property after it has been sold for taxes, the chancery clerk must pay back to the purchaser the amount that he paid at the tax sale and the amount that he paid in taxes which were due after the sale, including all interest, penalties and costs provided by statute. Bolen, Feb. 14, 1992, A.G. Op. #92-0025.

RESEARCH REFERENCES

ALR. Effect of certificate, statement (or refusal thereof), or error by tax collector or other public officer regarding unpaid taxes or assessments against specific property. 21 A.L.R.2d 1273.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 898 et seq.

CJS. 85 C.J.S., Taxation § 1354 et seq.

§ 27-45-3. Persons who may redeem land.

The owner, or any persons for him with his consent, or any person interested in the land sold for taxes, may redeem the same, or any part of it, where it is separable by legal subdivisions of not less than forty (40) acres, or any undivided interest in it, at any time within two (2) years after the day of sale, by paying to the chancery clerk, regardless of the amount of the purchaser's bid at the tax sale, the amount of all taxes for which the land was sold, with all costs incident to the sale, and five percent (5%) damages on the amount of taxes for which the land was sold, and interest on all such taxes and costs at the rate of one and one-half percent (1-½%) per month, or any fractional part thereof, from the date of such sale, and all costs that have accrued on the land since the sale, with interest thereon from the date such costs shall have accrued, at the rate of one and one-half percent (1-½%) per month, or any fractional part thereof; saving only to infants who have or may hereafter inherit or acquire land by will and persons of unsound mind whose land may be sold for taxes, the right to redeem the same within two (2) years after attaining full age or being restored to sanity, from the state or any purchaser thereof, on the terms herein prescribed, and on their paying the value of any permanent improvements on the land made after the expiration of two (2) years from the date of the sale of the lands for taxes. Upon such payment to the chancery clerk as hereinabove provided, he shall execute to the person redeeming the land a release of all claim or title of the state or purchaser to such land, which said release shall be attested by the seal of the chancery clerk and shall be entitled to be recorded without acknowledgment, as deeds are recorded. Said release when so executed and attested shall operate as a quitclaim on the part of the state or purchaser of any right or title under said tax sale.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 2 (15), art. 13 (15), art. 17 (27); 1857, ch. 3, art. 39, 1871, § 1701; 1880, §§ 531, 561; 1892, §§ 3823, 3853; 1906, §§ 4330, 4338; Hemingway's 1917, §§ 6964, 6972; 1930, § 3264; 1942, § 9948; Laws, 1910, ch. 214; Laws, 1928, chs. 40, 79; Laws, 1932, ch. 286; Laws, 1995, ch. 468, § 15, eff from and after passage (approved March 27, 1995).

Cross References — Constitutional provision granting right of redemption from sale of lands for taxes, see Miss. Const. Art. 4, § 79.

Sale of property for municipal taxes, see § 21-33-63.

Enforcement of municipal special improvements assessments, see § 21-41-25.

Redemption from mobile home tax sales, see § 27-53-17.

JUDICIAL DECISIONS

1. In general.
2. Persons entitled to redeem, generally.
3. —Infants.
4. —Decisions, under 1932 Amendment, relating to infants.
5. Necessity and sufficiency of offer to redeem.
6. Time for redemption.
7. Effect of redemption.
8. —Release of land from tax sale.

1. In general.

Tax sale purchasers' interest in the properties at issue continued to be a lien on the subject property until all redemption amounts were paid to them. High Sierra Tax Sale Props., LLC v. Daley, 188 So. 3d 1224 (Miss. Ct. App. 2015), writ of certiorari denied by 188 So. 3d 575, 2016 Miss. LEXIS 170 (Miss. Apr. 21, 2016).

Tax deeds were invalid because the former property owners had been served with notice by publication of the end of the redemption period but had not been served personally by the sheriff, as required by Miss. Code Ann. § 27-43-3 (2002). However, the tax sale purchaser's successor remained entitled to statutory damages under Miss. Code Ann. § 27-45-3 (Rev. 2006). Rebuild Am., Inc. v. McGee, 49 So. 3d 156 (Miss. Ct. App. 2010).

Chancellor erred in failing to award damages and interest to an owner in its quiet title action pursuant to Miss. Code Ann. §§ 27-45-3 and 27-45-27 because the issue was properly submitted to the chancery court in the owner's initial complaint, but the chancellor's final judgment did not address whether the owner would be entitled to damages; the chancellor should have addressed the issue before entering a final judgment. Rebuild Am., Inc. v. Estate of Wright, 27 So. 3d 1202 (Miss. Ct. App. 2010).

Where the tax sale was set aside, the chancellor erred in not ordering the property owner to pay the tax sale purchaser the interest due the purchaser as provided by See Miss. Code Ann. § 27-45-3, at one and one half percent per month, together with damages thereon at a rate of five percent annum on such amount due. Lawrence v. Rankin, 870 So. 2d 673 (Miss. Ct. App. 2004).

A chancery clerk did not have the legal authority to execute a tax deed on property where the creditor, who was responsible for paying the taxes on the property, was ready, willing and able to pay the cost of redemption and would have paid the delinquent taxes if the clerk had not erroneously informed the creditor that someone had already redeemed those taxes. Merritt v. Magnolia Federal Bank for Sav., 573 So. 2d 746 (Miss. 1990).

Where, subject to the sale of land for nonpayment of special improvement assessments but prior to the sale's maturity, the state highway commission took a deed to the property from the owner of record, it acquired only the former owner's equity of redemption; and when the commission failed to redeem the property within the two year statutory period it had no further interest in the lands, and the purchaser at the tax sale became vested with a perfect legal title. Equity Servs. Co. v. Mississippi State Hwy. Comm'n, 192 So. 2d 431 (Miss. 1966).

Sale by the purchaser of tax title of his interest to another who agreed to and did pay the chancery clerk the necessary amount after the redemption period had expired and received from the clerk tax deeds executed and recorded in favor of the purchaser did not constitute a redemption of the land. Bounds v. Brown, 201 Miss. 564, 29 So. 2d 657 (1947).

The process of redemption is so interfered with by the sale as a unit in the aggregate of two or more separate tracts of land as to render such sale void, even though all of the land be owned and assessed to one individual or a single owner. Slush v. Patterson, 201 Miss. 113, 28 So. 2d 738 (1947), error overruled, 201 Miss. 131, 29 So. 2d 311 (1947).

Where the state is not a party to proceeding in which record owner of land is granted the right to redeem property from tax sale, question as to whether such owner is required to pay all intervening taxes as a prerequisite cannot be raised by parties purchasing the land from the state, since such question can only be raised by the state. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Under this section [Code 1942, § 9948] and Code 1942, § 9935, it is the duty of tax collector, in making out his list to be filed with chancery clerk of land sold to the state, to enter for each separate assessment (1) the date when sold, (2) to whom assessed, (3) the description, (4) the number of acres, and (5) the valuation, after which he should extend on the list opposite each separate assessment the statement (a) of the various items of the original or basic ad valorem taxes including district levies, (b) of the damages, (c) of the fees and (d) of the total taxes and costs. State v. Wilkinson, 197 Miss. 628, 20 So. 2d 193 (1944), error overruled, 197 Miss. 651, 20 So. 2d 836 (1945).

Where land sold to state for taxes is not redeemed, all taxes thereon remain in abeyance until land is sold by state. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

The law in force at the time of the tax sale becomes a part of the contract sale and the rights of the parties are determined thereby. Price v. Harley, 142 Miss. 584, 107 So. 673 (1926).

Where there is the burden of a common lien or charge on land equity has jurisdiction to apportion such burden between the owners of the property. Swalm v. Sauls, 141 Miss. 515, 106 So. 775 (1926).

The filing of a suit to redeem stops the statute of limitations from running. Swalm v. Sauls, 141 Miss. 515, 106 So. 775 (1926).

Redemption statutes are to be liberally construed in favor of redemption. Darrington v. Rose, 128 Miss. 16, 90 So. 632 (1922).

The legislature has authority to provide what shall be a sufficient description of land on the assessment roll where the method is such as to clearly indicate the land assessed. Reed v. Heard, 97 Miss. 743, 53 So. 400 (1910).

The right to redeem cannot be taken away and destroyed by the legislature. It is something more than mere grace. Moody v. Hoskins, 64 Miss. 468, 1 So. 622 (1887).

2. Persons entitled to redeem, generally.

The owner of one lot may maintain a suit to redeem that lot where it and another lot were assessed and sold together for taxes. Swalm v. Sauls, 141 Miss. 515, 106 So. 775 (1926).

Any person interested in land sold for taxes has a right to redeem it. Darrington v. Rose, 128 Miss. 16, 90 So. 632 (1922).

Where parcels of land separately assessed to a single owner have been sold together for the aggregate amount of state and county taxes and conveyed by a single tax deed such sale being void, anyone interested therein is entitled to redeem the whole or any of the parcels so separately assessed, the objection that under this section [Code 1942, § 9948] the redemption is not allowable on part of the land embraced in the tax being without merit in such case. Hewes v. Seal, 80 Miss. 437, 32 So. 55 (1902).

3. —Infants.

Where it appeared that owner of land deeded it to his eleven-year-old son, and had the deed recorded, that son was thereafter regarded as the legal owner although the grantor retained possession of the deed until the son married, the deed was delivered as of the time of recording so as to entitle the son to the benefit of the two-year period after reaching majority in which to redeem such land from tax sale which took place about a year after the recording of the deed. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Although evidence was conflicting, evidence of landowner's birth as shown by his testimony and that of his mother, and by the Bible record made by his father and by records of vital statistics of the state and the certificate of the attending physician, was sufficient to sustain finding that such owner offered to redeem within two years after reaching his majority. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Offer and request by record owner of land to redeem land from tax sale, within the two-year period allowed a minor in which to redeem, took away from the state the power to convey the title to such land. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Plaintiffs, who were minors at the time of a tax sale, had a right to redeem their interest in the land, where at the time of the filing of the bill in the cause two years had not expired since any of them had attained majority. Simpson v. Ricketts, 185 Miss. 280, 186 So. 318 (1939).

Where the questions involved in an attack on a tax title, such as questions of improvements and rent and partition, made the statutory remedy inadequate, persons who had reached their majority since the tax sale may resort to the chancery courts to confirm their claim of title to land, to recover rent for its use and for partition and for cancelation of a tax deed to one party defendant and conveyance by him thereof to the other defendant. Simpson v. Ricketts, 185 Miss. 280, 186 So. 318 (1939).

The chancery court was properly resorted to by persons seeking to confirm their claim of title to certain land, to recover rent for its use, for partition, and for cancelation of a tax deed to one party defendant and a conveyance by him thereof to another defendant, where such persons by reason of their minority at the time of the tax sale and their bringing suit prior to the lapse of two years from their attaining majority were entitled to redeem, but the remedy afforded by this section [Code 1942, § 9948] was not adequate. Simpson v. Ricketts, 185 Miss. 280, 186 So. 318 (1939).

An infant owning an undivided interest in land sold for taxes may within two years after attaining his majority redeem his interest in the land from the tax sale. Jones County Land Co. v. Fox, 120 Miss. 798, 83 So. 241 (1919).

An infant's right to redeem land after attaining his majority is a property right which he may vest in his vendee, and the vendee may exercise the same right within the time prescribed by statute. Jones County Land Co. v. Fox, 120 Miss. 798, 83 So. 241 (1919).

Infants owning an undivided interest can redeem only their portion of the land. Wilson v. Sykes, 67 Miss. 617, 7 So. 492 (1890).

If the holder of the tax title sue in ejectment, a tender by an infant who has the right to redeem, of the amount necessary to redeem, will defeat the ejectment. Even after judgment in like case such a tender would stop its enforcement. Price v. Ferguson, 66 Miss. 404, 6 So. 210 (1889).

The right of infants after becoming of age to redeem is unaffected by confirmation proceedings. Metcalfe v. Perry, 66 Miss. 68, 5 So. 232 (1888).

Infants may ask a court of equity to sell a part of the land to enable them to redeem. Johns v. Smith, 56 Miss. 727 (1879).

4. —Decisions, under 1932 Amendment, relating to infants.

It is clear hereunder that the legislature had in mind the preservation of the right to redeem, two years after the minor reached his majority, the land which he had inherited under the laws of descent and distribution, or had acquired by will, and that they did not intend by the language used to condone the practice which had already obtained of conveying land to minors in order to secure a long time for its redemption. Hanna v. Ford, 189 Miss. 464, 198 So. 37 (1940).

A minor who acquired land by deed prior to the passage of the provision permitting infants "who have or may hereafter inherit or acquire land by will," the right to redeem the same within two years after attaining full age, was not entitled to the benefit of two years after his attaining majority in which to redeem the land from tax sale to the state, or a purchaser from the state, since this provision applied only to land inherited or acquired by will, and such minor was relegated to the two-year period from the date of the tax sale generally granted by this section [Code 1942, § 9948] to all persons. Hanna v. Ford, 189 Miss. 464, 198 So. 37 (1940).

As amended by Laws 1932, chapter 286, the word "have" although in the past tense, is to be read in connection and in conjunction with the word "inherit," with respect to the savings provision in regard to infancy, and accordingly the savings provision does not apply to a case where the minor acquired land by deed prior to the passage of the act and, therefore, his right to redeem existed only within the two years from the date of the tax sale generally granted by this section [Code 1942, § 9948] to all persons. Hanna v. Ford, 189 Miss. 464, 198 So. 37 (1940).

This section [Code 1942, § 9948], as amended by laws of 1932, chapter 286, doubtless intended to prevent the conveyance of land to minors by deed thereafter for the sole purpose of permitting the land to be sold while the title was in the name of such minor, with the intention on the part of the grantor to continue in possession and enjoyment of the same without the payment of taxes during the period within which the minor would have had to redeem, had the amendment not been adopted so as to limit the right to redeem, within two years after reaching his majority, to only such land as he may have inherited, or acquired by will. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

The amendment was intended to restrict, rather than to enlarge, the saving clause in favor of infants, so as to limit their right to redeem their land within two years after attaining full age to such land as they might, after the passage of the amendment, inherit or acquire by will. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

The amendment to the savings clause in favor of infants contained in the former section hereto, to read "saving only to infants who have or who may hereafter inherit or acquire land by will," has no application to a sale taking place before the enactment of such amendment for the reason that the patentee acquired such rights as the state owned and the state obtained its title before the enactment of such amendment. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

The words "to have or may hereafter inherit or acquire land by will," have reference to the time of the enactment of the statute, and do not relate to any tax sale that may have been made prior to the passage of the act. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

This provision affording minors whose lands are sold for taxes the right to redeem after they reached their majority, applies only to land that belongs to minors, and in which they have an interest at the time they are sold for taxes, and not that in which they may subsequently acquire an interest. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

Where the land which complainant sought to redeem under the saving clause pertaining to minors belonged to their adult intestate at the time such land was sold for delinquent taxes to the state, the complainant inherited only such rights as their intestate had, that is, the right to redeem the land within two years from the date of sale. Moore v. Rotenberry, 188 Miss. 882, 196 So. 758 (1940).

5. Necessity and sufficiency of offer to redeem.

An offer and request to redeem when the party is ready and able to do so, where refused either arbitrarily or through unintentional misrepresentation of facts, takes away from the state the power to convey the title to land sold for delinquent taxes. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Where record owner of land informed chancery clerk of desire to redeem land from tax sale, having sufficient money on his person for such purpose, but clerk referred him to the state land office, and owner conferred with the state land commissioner with the purpose either to redeem or repurchase the land from the state but commissioner informed him that it was too late to redeem the land, such acts of the owner constituted a sufficient offer of redemption. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

Where purchasers of land from tax sale purchaser had notice of the public records affecting their title and the rights of true owner of land shown thereby, and that record owner was in possession of the premises through his tenant when purchasers obtained their deed, purchasers were not innocent purchasers for value so as to preclude decree in favor of record owner in suit seeking to cancel patent issued by the state to the tax sale purchaser, and to annul and cancel a deed from the latter to such purchasers and to obtain an adjudication that such record owner had performed such acts as were necessary to legally redeem the land from the tax sale to the state. Beauchamp v. McLauchlin, 200 Miss. 83, 25 So. 2d 771 (1946).

6. Time for redemption.

Even if a buyer from a tax sale was a necessary and indispensable party under Miss. R. Civ. P. 19 to a proceeding where the redemption period in Miss. Code Ann. § 27-45-3 was extended for 60 days, the buyer's successor in interest was procedurally barred from bringing its Miss. R. Civ. P. 19 objection on appeal since the issue was not raised. The issue was not heard sua sponte in accordance with Shaw v. Shaw, 603 So. 2d 287 (Miss. 1992), because the buyer was notified by letter of the foreclosure sale and the possibility that the tax redemption period could be extended, this knowledge was imputed to the successor in interest, and neither the buyer nor the successor in interest chose to challenge the joinder issue until after the conclusion of the trial court proceedings. Marathon Asset Mgmt., LLC v. Otto, 977 So. 2d 1241 (Miss. Ct. App. 2008).

Since there was nothing prohibiting the extension of the two-year redemption period in Miss. Code Ann. § 27-45-3, and a liberal construction of § 27-45-3 had been ordered, a chancellor did not err by finding that a 60-day extension of the time period was permissible where a delay was outside of the control of the purchasers at a foreclosure sale. The purchasers had been ready to redeem during the requisite period, but had been unable to do so due to a delay by the prior owners. Marathon Asset Mgmt., LLC v. Otto, 977 So. 2d 1241 (Miss. Ct. App. 2008).

Automatic bankruptcy stay was lifted for the limited purpose of allowing a Chapter 11 debtor, a secured creditor, and a tax sale purchaser of the debtor's property to litigate in the Mississippi courts the legal effect of the creditor's purported redemption of the property after the two-year redemption period set out in Miss. Code Ann. § 27-45-3 had expired. In re TEV Inv. Props., LLC, — Bankr. —, 2006 Bankr. LEXIS 2121 (Bankr. N.D. Miss. Aug. 25, 2006).

Purchaser was granted partial summary judgment as to the interest a debtor had in real property that the purchaser bought at a tax sale because the property was not part of a debtor's estate since her right to redeem the tax sale under Miss. Code Ann. § 27-45-3 and 11 USCS § 108(b), which was not tolled by the automatic stay, had expired. Greenpoint Credit, LLC v. Isom (In re Isom), 342 B.R. 743 (Bankr. N.D. Miss. May 10, 2006).

Pursuant to 11 USCS § 108(b), since the two-year state law redemption period under Miss. Code Ann. § 27-45-3 had not expired before the bankruptcy filing date, a debtor had the balance of the two-year period to redeem the tax sale; however, because the right of redemption was not timely exercised within two years after the filing date, the buyer of the property at a pre-petition tax sale was entitled to partial summary judgment on its claim that the property was not an asset of the bankruptcy estate. Greenpoint Credit, LLC v. Isom (In re Isom), 342 B.R. 743 (Bankr. N.D. Miss. 2006).

When trial court determined that landowners had not received notice of the expiration of the redemption period to redeem their land, which was sold in a tax sale, and there was no record of the clerk and the sheriff having served the statutorily required notice, the trial court did not err in voiding the tax sale to the tax sale purchaser. Alexander v. Womack, 857 So. 2d 59 (Miss. 2003).

The heir of one dying incompetent may exercise the right of redemption which the incompetent, if restored to sanity, might have exercised within two years. Carter v. Klein, 243 Miss. 627, 139 So. 2d 629 (1962), error overruled, 243 Miss. 635, 140 So. 2d 95 (1962).

Where property previously sold for municipal ad valorem taxes was also sold for special improvement taxes to another person, the special improvements tax purchaser acquired complete title upon the failure of the municipal ad valorem tax purchaser to redeem within two years from the date of sale. Shelton v. Reliance Inv. Co., 230 Miss. 51, 92 So. 2d 329 (1957).

Right of redemption may be exercised, within the two years allowed by statute for redemption of land from tax sales, in an equity proceeding making a bona fide attack upon the validity of a tax sale; the method is not limited to that before the chancery clerk as provided in Code 1942, § 9947. Jones v. Seward, 196 Miss. 446, 16 So. 2d 619 (1944).

Where § 3 of chapter 196, Laws 1934, approved April 4th, 1934, if applied to a case where a tax sale, had prior to the enactment thereof, on September 18, 1933, was void and at that time the owner had three years from the day of the sale in which to redeem, would extinguish such right of redemption at the expiration of two years from the date of sale, thereby cutting off five months, fourteen days from the time in which the owner could redeem it, and would be unconstitutional, such section is inoperative to that extent so that the right of the owner to redeem the land from the tax sale would be unaffected thereby; a constitutional defect in such section, as applied to such circumstances, does not render it wholly void but simply requires that its operation be so restricted as to preserve the right of redemption that existed when the land was sold for taxes. Lee v. Smith, 189 Miss. 636, 198 So. 296 (1940).

Under statute providing that owner or any person interested in land sold for taxes may redeem it at any time within two years after date of sale, in order that two full years may elapse, day of sale must be excluded, since law does not recognize any fractional part of a day in computing period for bar of an action or right by lapse of time. Dougall v. Carriere, 175 Miss. 845, 168 So. 285 (1936).

Land held redeemed from tax sale within time allowed by law, and hence purchaser of land was not entitled to confirm tax title, where sale was made on April 7, 1930, and land was redeemed on April 7, 1932, which was within two years after day of sale. Dougall v. Carriere, 175 Miss. 845, 168 So. 285 (1936).

The owner of land has two years from the date of the sale to redeem tax land. K.C. Lumber Co. v. Moss, 119 Miss. 185, 80 So. 638 (1919).

The time for redemption is two years from the date of sale and not from the day of filing. Henry Brannon & Son v. Pringle, 94 Miss. 215, 47 So. 674 (1908).

The statute allowing two years for redemption from a tax sale is not a statute of limitations within § 104 Const. and a county has no right after expiration of two-year period to redeem such land, although after the tax sale it bought it at a trustee's sale in order to protect a loan made by it on the land prior to the tax sale. Tallahatchie County v. Little, 93 Miss. 88, 46 So. 257 (1908).

7. Effect of redemption.

Even though the estate retained a right of possession and redemption — the fee passed to the State of Mississippi on August 28, 2000, and the State became the owner of the land, and after the sale and during the time allowed for redemption, the State possessed an inchoate title to the land, and after the redemption period was over, the Secretary of State had charge of the lands forfeited to the state for nonpayment of taxes. Smith v. Jackson State Univ., 995 So. 2d 88 (Miss. 2008).

When the owner of land sold for taxes redeemed it therefrom, the chancery clerk, through whom the redemption must be made, was required to execute to him a release of all claim or title of the state or purchaser to such land, by virtue of which the tax sale, from which the land was regained, was without further efficacy, and the owner's title and right to possession did not rest on defects in the assessment or sale of the land, so the necessity for an action to cancel the title of the purchaser at the sale no longer existed. Lee v. Smith, 189 Miss. 636, 198 So. 296 (1940).

A redemption inures to the benefit of the real owner no matter by whom made. Jamison v. Thompson, 65 Miss. 516, 5 So. 107 (1888).

A redemption does not confer title. It simply divests all the tax purchaser's rights, title or interest in the land. Greene v. Williams, 58 Miss. 752 (1881).

8. —Release of land from tax sale.

Where, after the sale of land to the state for delinquent taxes, the record owner applied to the chancery clerk for a release of the land from that sale, it was the clerk's duty to issue the release if, but not unless, he had collected from the record owner the payments required for the redemption of the land, including all taxes and costs which had accrued on the land since the sale. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

Where, after the sale of land to the state for delinquent taxes, the record owner applied to the chancery clerk for a release and the clerk neglected to collect the taxes due for 1934, such owner was not chargeable with clerk's failure in this respect unless he fraudulently participated therein. Stegall v. Miles, 194 Miss. 353, 12 So. 2d 537 (1943).

ATTORNEY GENERAL OPINIONS

A purchaser at a tax sale is not entitle to a tax deed until the expiration of the redemption period from the time of purchase at the tax sale, even if the purchaser redeems the property from prior tax sales. Brister, Nov. 14, 1997. A.G. Op. #97-0712.

The legislative intent in amending this section, but not amending § 27-35-63, was to expedite the assessment, levy and collection of ad valorem taxes upon land; thus, upon a redemption of land from a sale to the state for unpaid ad valorem taxes, the redeemer must pay the sums required by § 27-35-63. McLeod, June 11, 1999, A.G. Op. #99-0276.

Upon delivery of a requested tax deed to an individual to whom the property matured after a tax sale, the chancery clerk does not have the authority to require that individual to redeem the taxes due for subsequent years. McGee, May 17, 2002, A.G. Op. #02-0267.

There is no statutory authority for the tax assessor or the chancery clerk to require the holder of a tax deed to pay taxes due prior to his initial purchase since such taxes were paid as a part of the prior unredeemed tax sales; the existence of a prior unredeemed tax sale should not affect the ability of the current owner to pay taxes due. Gex, July 26, 2002, A.G. Op. #02-0402.

RESEARCH REFERENCES

ALR. Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation. 54 A.L.R.2d 1172.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 909 et seq.

17 Am. Jur. Legal Forms 2d, State and Local Taxation § 238:73 (certificate of redemption).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 251 et seq. (redemption).

CJS. 85 C.J.S., Taxation § 1359, 1360 et seq.

§ 27-45-5. Deposit of redemption funds; disposition.

It shall be the duty of the chancery clerk of each county in the state to immediately deposit in the county depository of his county all sums of money paid to him by any person for the redemption of land sold for taxes in his county; all such funds are hereby declared to be public funds, and shall be secured by the county depository, as other public funds are required to be secured by law. The board of supervisors of each county shall provide the clerk with printed checks in the form of vouchers, with proper blanks, bound in book form with a sufficient blank margin to be used in drawing redemption funds out of the county depository; all such checks shall be numbered in numerical order, and it shall be the duty of the clerk to draw on such funds upon such checks as herein provided in payment of all amounts due the officers and purchasers out of said funds. He shall first pay the officers entitled to their costs, fees, and damages which are allowed to said officers by law; and he shall then pay to the purchasers at any such tax sale, the full amount due him as provided by law. It shall be the duty of the state auditor of public accounts to audit such account of each clerk, as other public funds are audited; and he shall include in said audit a special report to the board of supervisors of his county setting out in detail the amounts collected, and the disposition of such funds, and the balance on hand, and attest to the correctness thereof.

If such clerk shall neglect, refuse or fail to deposit such funds received by him as herein provided, he shall be guilty of misfeasance in office, and in addition thereto shall be liable on his official bond to any person injured by his failure to deposit such funds in the county depository as herein provided.

SOURCES: Codes, 1942, § 9949; Laws, 1940, ch 303.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

JUDICIAL DECISIONS

1. In general.

In an action to establish ownership of, or a leasehold interest in oil, gas and other minerals on and under certain land that had been sold in a tax sale, on the ground that there had been a redemption of the property from the sale, the evidence was insufficient to invalidate defendant's tax deed where, inter alia, plaintiffs had come forward with only speculative information as to the completion of the statutorily required redemption disbursement, settlement and report; the tax sale record abstract was blank where the date of redemption, if any, was to be shown. Clement v. R.L. Burns Corp., 373 So. 2d 790 (Miss. 1979).

ATTORNEY GENERAL OPINIONS

When property sold for taxes is redeemed, chancery clerks are required to pay the individual purchasers the full amount due them, and where there are insufficient funds in the account from which the payments are supposed to be paid, the payments must be made from any available county funds after first being lawfully transferred into the land redemption fund by the board of supervisors. Dobbins, Sept. 8, 2006, A.G. Op. 06-0438.

RESEARCH REFERENCES

CJS. 85 C.J.S., Taxation § 1462.

§ 27-45-7. Mortgagee may redeem in part.

If there exist upon a portion of a tract of land sold for taxes a lien, either of a deed of trust or mortgage of any kind, the mortgagee or holder of the notes secured by such deed of trust, or any person interested in such real estate may redeem that portion of the land so sold in solido upon which portion such mortgagee or owner of notes secured by deed of trust holds such lien in the following manner, to-wit:

Such mortgagee or owner of notes secured by a deed of trust or any person interested in such real estate may apply, in writing, to the chancery clerk of the county in which the land was sold, within the time provided by law, for redemption from the sale for taxes of such portion of the entire tract so sold in solido. Upon the application being filed with him, it shall be the duty of the chancery clerk to give ten (10) days' notice, in writing, of such application, by registered mail, to the last known post-office address with return receipt requested, to the owner and to the purchaser at the tax sale, and to all persons holding mortgages or other liens of record on the land so sold in solido or any part thereof, which notice shall designate a time not less than ten (10) days from the mailing thereof when such clerk shall hear and perform the duties hereinafter provided for. The clerk shall enter on the record of such tax sale notations giving the date when such notices were mailed and the names and post-office addresses of persons to whom mailed. On the date named for such hearing, the chancery clerk shall make such investigation as he may deem necessary to ascertain the relative value which that portion of the land on which the lien of such mortgage or deed of trust is held by the applicant, or by any other person, bears to the value of the entire land sold in solido for taxes, and the chancery clerk shall apportion the taxes due upon such portion at the ratio which said portion, upon which the lien exists, bears to the entire value of the property sold in solido for taxes. Upon such apportionment, the mortgagee or holder of the deed of trust, or any person interested in such real estate, shall be entitled to redeem that part of the land by payment of the sum apportioned thereon to the chancery clerk, regardless of the amount of the purchaser's bid at the tax sale, with its proportionate part, calculated as above provided, of all costs, damages and interest consequent upon the sale, and also all state and county taxes that have accrued upon that portion of said land since the sale, apportioned by the chancery clerk in the manner hereinabove provided, together with interest thereon, at the rate of one per centum per month, or any fractional part thereof, from the date such taxes shall have accrued.

SOURCES: Codes, 1930, § 3265; 1942, § 9950; Laws, 1928, chs. 40, 79; Laws, 1932, ch. 286.

Cross References — Mortgagee's redemption in part of land sold for municipal special improvement taxes, see § 21-41-31.

Rights of purchase money mortgagee, see § 89-1-45.

JUDICIAL DECISIONS

1. In general.

Conveyance from the chancery clerk is not necessary to transfer title to the tax purchaser where the sheriff and tax collector's list of the tax sale has been duly made and filed with the chancery clerk. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229 (1951).

Statute permitting redemption in part by mortgagee of land sold for taxes held not to authorize mortgagee of life tenant to have taxes due on life estate apportioned, and hence did not render mortgagee paying entire, fee-simple taxes a volunteer as to amount in excess of amount apportionable to life estate. Federal Land Bank v. Newsom, 175 Miss. 134, 166 So. 346 (1936).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 910.

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 254 (complaint, petition, or declaration to cancel redemption of property); Form 257 (allegation of complaint, petition, or declaration that mortgagee is entitled to redeem property sold at tax sale); Form 258 (allegation of complaint, petition, or declaration of official's refusal to accept redemption moneys from assignee of mortgage).

CJS. 85 C.J.S., Taxation § 1363.

§ 27-45-9. Effect of redemption of part.

The redemption mentioned in Section 27-45-7 shall operate to fully and effectually redeem that portion of the land from the operation of the tax sale from which such redemption is made and shall leave in full force and effect the tax sale as to the remainder of the land so sold for taxes, which remainder, or any part thereof, may thereafter, in the time provided by law, be redeemed by the owner or any person interested in such real estate by the payment of the balance due, or such part thereof calculated as above provided. In the event that there shall exist several trust deeds or mortgages upon the property so sold in solido, and redemption under one or more of such trust deeds shall operate so as to effect redemption of a portion of the lands in any one of the others, because of overlapping descriptions and leave unredeemed the remainder of the land covered by such other deeds of trust or mortgages, the chancery clerk shall likewise have power to apportion in the same manner as aforesaid the amount required to redeem the remainder of the land included in such trust deed, omitting the portion of the land in such trust deed which had been previously redeemed, in the manner as above provided. Upon redemption by one other than the owner of the land redeemed, it shall be the duty of the redeemer to immediately notify, in writing, by registered mail with return receipt requested, any and all persons holding prior lien or liens of deed of trust or mortgage shown by the records of deeds of trust of the county where the land is situated, of the redemption of such part or all of said land, addressed to the lienor or lienors at his or their last known post-office address, and to file a copy of such notice or notices with the chancery clerk of said county who shall make entry of the receipt of the copy of such notice or notices on the record of tax sales of his office where such record of the redemption is entered. If the redeemer shall fail to give the notice or notices as above provided for, then such redeemer shall not be entitled by subrogation, or otherwise, to obtain or be granted any prior equity upon the land so redeemed over any prior lienor or lienors on the land so redeemed, whether such equity by subrogation or otherwise existed or not. Upon redemption of land or any part thereof as above provided, the chancery clerk shall execute a release thereof from the tax sale with the same effect, and shall note the redemption on his tax sales record, as is provided for redemptions in the usual manner.

SOURCES: Codes, 1930, § 3266; 1942, § 9951; Laws, 1928, chs. 40, 79.

JUDICIAL DECISIONS

1. In general.

Statute permitting redemption in part by mortgagee of land sold for taxes held not to authorize mortgagee of life tenant to have taxes due on life estate apportioned, and hence did not render mortgagee paying entire fee-simple taxes a volunteer as to amount in excess of amount apportionable to life estate. Federal Land Bank v. Newsom, 175 Miss. 134, 166 So. 346 (1936).

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 905.

CJS. 85 C.J.S., Taxation §§ 1368, 1445-1450.

§ 27-45-11. Redemptions from municipal tax sales.

All rights and privileges and duties granted or imposed, in the preceding sections, upon lienors or any person interested in such land with reference to redemption from tax sales made for nonpayment of state and county taxes shall likewise apply and be applicable to like redemptions from municipal tax sales or municipal separate school district tax sales, and also to levee and drainage district tax sales. With reference to such redemptions, the written application for redemption shall be addressed to the municipal clerk, or to the like officer of the levee or drainage district, as the case may be, who shall be the official to perform the appropriate duties and to make the necessary investigation and apportionment of the sum necessary to redeem as to any interested lienor or any person interested in such land who shall have the right to make application to redeem, as herein set forth.

SOURCES: Codes, 1930, § 3267; 1942, § 9952; Laws, 1928, chs. 40, 79.

Cross References — Constitutional provision granting right of redemption from sale of lands for taxes, see Miss. Const. Art. 4, § 79.

Redemption of land sold for municipal taxes, see § 21-33-61.

§ 27-45-13. Redemption of lands sold by mistake.

When anyone, designing and endeavoring to pay the taxes due on his own land, shall by mistake pay the taxes due on other land than his own, in consequence whereof his own land shall have been sold for taxes, such person may, within the two (2) years allowed for redemption, make affidavit of the facts, and if the taxes for which his land was sold, and the costs of such sale exceed the amount he had so paid, he shall pay the tax collector of the county the difference, and also all taxes subsequently accrued on such land and not before paid, and shall protect the state and county against any loss by reason of the mistake. He shall obtain the receipt in duplicate of such collector for what he shall pay him, which receipt it shall be the duty of the collector to give him, specifying particularly on what account such payment was made. Said receipts need not be from the book of receipts required to be kept. He shall deposit one (1) of said receipts with the chancery clerk, together with said affidavit setting forth the facts of such mistake; and thereupon it shall be the duty of the chancery clerk to release to such person the title of the state or individual purchaser to such land, and, where the land was sold to the state, to notify the auditor to make proper entry on the assessment roll in his office. The auditor and the chancery clerk shall charge the tax collector with the amount due on the transaction to the state and county, respectively, and the collector shall also make proper entry on the assessment roll in his office.

SOURCES: Codes, 1880, § 573; 1892, § 3863; 1906, § 2940; Hemingway's 1917, § 5275; 1930, § 3268; 1942, § 9953.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Refund of taxes, generally, see § 27-73-1 et seq.

Lands claimed by state stricken from tax list, see § 29-1-27.
Failure of title to public lands, see § 29-1-85.

RESEARCH REFERENCES

Am Jur. 22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Form 232.1 (Complaint, petition, or declaration — By purchaser of unknowingly redeemed tax sale certificate — For refund of amount paid and costs).

28 Am. Jur. Proof of Facts 3d 439, Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property.

§ 27-45-15. Sale of land paid on by mistake.

Land on which said person had paid on by mistake, shall be sold for the taxes and costs, the payment of which, except for mistake, it had escaped, as follows: The chancery clerk shall notify the tax collector of his release of the land first sold and the collector shall immediately give notice in writing to the person in possession of the land paid on by mistake, if any, or to the owner or person claiming it, that at a meeting of the board of supervisors of the county, to be designated in such notice, he will apply for an order to sell said land because of the foregoing facts. At such meeting, the collector shall report the facts in writing to the board of supervisors, and that he has given notice as above required, and said board shall hear any objection to the proposed sale of such land, and unless there be some valid objection shall order it to be sold. Thereupon the collector shall advertise it as sales of land for taxes are required to be advertised, and shall sell it on some day when it is lawful to sell land under execution in his county, and shall proceed in all respects as required in making sales of land for taxes on the first Monday of April. He shall report the lists of lands so sold to the clerk of the chancery court in the same manner and within the same relative time as provided for sales of land for taxes at the usual time. He shall pay over to the proper officers the taxes collected from sales to individuals as in other cases.

SOURCES: Codes, 1880, § 573; 1892, § 3864; 1906, § 2941; Hemingway's 1917, § 5276; 1930, § 3269; 1942, § 9954.

Cross References — Reconveyance of lands acquired by state through error, see § 29-1-25.

RESEARCH REFERENCES

Am Jur. 28 Am. Jur. Proof of Facts 3d 439, Proof of Circumstances Justifying the Setting Aside of Tax Sales of Real Property.

§ 27-45-17. Release by clerk of title to certain lands.

If the owner, or any person interested in any land sold for taxes, shall at any time within two (2) years after the sale for taxes produce a receipt of the tax collector showing payment of the taxes, for which the land was sold, before the sale, and shall pay to the chancery clerk all subsequently accrued taxes, the said clerk shall release to the owner or person interested the title of the state or individual purchaser to such land. The land so released shall thereafter be dealt with as lands redeemed are required to be, and the tax collector, whose receipt was so produced, shall be charged with the taxes collected by him as in the case of other taxes.

SOURCES: Codes, 1880, § 574; 1892, § 3865; 1906, § 2942; Hemingway's 1917, § 5277; 1930, § 3270; 1942, § 9955.

§ 27-45-19. Record of state tax lands.

The tax collector shall keep a record of lands struck off to the state for taxes for his convenience in collecting taxes and making settlements with the state and county. The chancery clerk, when he releases such lands upon redemption, shall immediately notify the auditor and tax collector, giving name of person redeeming, date of redemption, and description of the land, and the auditor and collector, when they receive such notice, shall at once make entry thereof upon their records.

SOURCES: Codes, 1880, § 567; 1892, § 3857; 1906, § 2937; Hemingway's 1917, § 5272; 1930, § 3271; 1942, § 9956.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Recording of conveyances of land sold for municipal taxes, see § 21-33-67.

Records of conveyances of lands sold for drainage district taxes, see § 51-31-135.

§ 27-45-21. Certification by clerk of lands not redeemed.

(1) It shall be the duty of the chancery clerk, within thirty (30) days after the period of redemption has expired, to certify to the Secretary of State a list, on forms provided by the Secretary of State, of all lands struck off to the state for taxes, which have not been redeemed. The list shall show a description of the land, all costs, officer's and printer's fees, the tax for which it sold, segregated as to state, county, levee and drainage districts, and of all taxes due on the lands for the year in which it was struck off to the state, segregated as

to state, county, levee and drainage districts, a total of two (2) years' taxes listed separately (the taxes for which it sold and accrued taxes for one (1) year). If any chancery clerk shall fail or neglect to transmit such lists within the time specified, he shall be liable to the state on his official bond in the penalty of Fifty Dollars ($50.00) for each day that he is in default. The penalty to be collected by the Department of Revenue, or by the Attorney General, in a suit instituted for that purpose upon request of the Secretary of State; provided that the Secretary of State, if so requested by any chancery clerk before the expiration of ten (10) days and for good cause shown, may grant a reasonable extension of the time within which the clerk shall transmit his list.

(2) The Secretary of State may provide the forms described in subsection (1) of this section for certifying lands struck off to the state for taxes to the chancery clerk as an electronic record. The chancery clerk may certify the list of all lands struck off to the state by completing and submitting the form containing the electronic signature of the chancery clerk to the Secretary of State. An electronic record of the list submitted by the chancery clerk to the Secretary of State in the prescribed form and containing the electronic signature of the chancery clerk shall vest good title in the State of Mississippi to all lands listed in the form.

SOURCES: Codes, Hemingway's 1921 Supp. § 7049b; 1930, § 3272; 1942, § 9957; Laws, 1920, ch. 231; Laws, 1942, ch. 237; Laws, 2016, ch. 414, § 1, eff from and after July 1, 2016.

Amendment Notes — The 2016 amendment, in (1), substituted "Secretary of State" for "State Land Commissioner" throughout, divided the former second sentence into the second and third sentences by substituting "in default. The penalty" for "in default , said penalty," substituted "Department of Revenue" for "State Tax Commission" in the third sentence, and made minor stylistic changes throughout; and added (2).

Cross References — Preparation of lists of tax lands, see § 29-1-123.

Expiration of redemption period for lands sold for drainage district taxes, see § 51-31-137.

ATTORNEY GENERAL OPINIONS

Upon receipt of a document executed by the owners of certain properties (or the parties which, but for tax sales, would be the owners of the properties) waiving any rights to challenge the Secretary of State's title to the properties and any claim to a refund from the county, the chancery clerk should certify to the Secretary of State that the property was not redeemed from the tax sales. Mott, Jr., May 17, 2002, A.G. Op. #02-0243.

§ 27-45-23. Conveyances to purchasers at tax sales.

When the period of redemption has expired, the chancery clerk shall, on demand, execute deeds of conveyance to individuals purchasing lands at tax sales. Which conveyances shall be essentially in the following form to wit:

"State of Mississippi, County of ________

Be it known, that ________, tax collector of said county of ________, did, on the ________ day of ________, A.D. ________, according to law, sell the following land, situated in said county and assessed to ________ to wit: ________ (here describe the land) ________ for the taxes assessed thereon (or when sold for other taxes it should be so stated) for the year A.D. ________, when ________ became the best bidder therefor, at and for the sum of ________ dollars and ________ cents; and the same not having been redeemed, I therefore sell and convey said land to the said ________

Given under my hand, the ________ day of ________, A. D. ________

____

Chancery Clerk.”

Such conveyance shall be attested by the seal of the office of the chancery clerk and shall be recordable when acknowledged as land deeds are recorded, and such conveyance shall vest in the purchaser a perfect title with the immediate right of possession to the land sold for taxes. No such conveyance shall be invalidated in any court except by proof that the land was not liable to sale for the taxes, or that the taxes for which the land was sold had been paid before sale, or that the sale had been made at the wrong time or place. If any part of the taxes for which the land was sold was illegal or not chargeable on it, but part was chargeable, that shall not affect the sale nor invalidate the conveyance, unless it appears that before sale the amount legally chargeable on the land was paid or tendered to the tax collector.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 2 (15); 1857, ch. 3, arts. 36, 38; 1871, §§ 1698, 1700; 1880, §§ 523, 525; 1892, §§ 3816, 3817; 1906, §§ 4331, 4332; Hemingway's 1917, §§ 6965, 6966; 1930, § 3273; 1942, § 9958; Laws, 1908, ch. 200.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in the last sentence of the last paragraph. The words “unless it appear that before sale” were changed to “unless it appears that before sale”. The Joint Committee ratified the correction at its May 20, 1998, meeting.

Cross References — Proceedings to confirm tax title, see § 11-17-1 et seq.

Period of occupation under tax title as bar to suit, see § 15-1-15.

Recording of conveyances of land sold for municipal taxes, see § 21-33-67.

Lists of lands sold at tax sale, see §§ 27-41-79, 27-41-81.

Forms for conveyances, see § 89-1-61.

JUDICIAL DECISIONS

1. In general.
2. Rights of tax title holder, generally.
3. Validity of sale; effect of invalid sale.
4. —Restrictions on right to purchase at tax sale.
5. —Rights of purchaser at invalid sale.
6. —Payment or tender of taxes.
7. —Limitation of time for redemption, as affected by invalidity of sale.
8. Effect of defects in tax deed.

1. In general.

Landowner's action for ejectment was not barred by res judicata because not only was the landowner not made a party to a prior action that vested perfect title in the disputed party to a developer's predecessor in title, she clearly did not receive proper notice of it as required by Miss. Code Ann. § 27-45-23; because the landowner submitted ample evidence that her property had never been the subject of delinquent taxes, the strip of land was not liable to sale for non-payment of taxes. Delta Hous. Dev. Corp. v. Johnson, 48 So. 3d 573 (Miss. Ct. App. 2010), writ of certiorari denied en banc by 49 So. 3d 1139, 2010 Miss. LEXIS 628 (Miss. 2010).

A conveyance from the chancery clerk is not necessary to transfer title to the tax purchaser, where the sheriff and the tax collector's list of tax sale has been duly made and filed with the clerk. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229 (1951).

Court, if it can do so, must harmonize Code 1942, §§ 3936 (as amended by Laws, 1944, ch. 179, § 1(D), subsection (d)), 9936, and 9958, which were adopted by the legislature at the same time. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

Subsection (d) of Code 1942, § 3936, allowing tax collector fee of $1 for each conveyance of land sold to individual for taxes, was not impliedly repealed by this section [Code 1942, § 9958], directing chancery clerk to execute deed of conveyance to individual purchaser at tax sale, even though both sections were adopted in the Code of 1930, especially in view of the fact that subsection (d) was re-enacted in the Laws, 1944, chapter 179, § 1(D), subsection (d). Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

Inadvertence cannot be ascribed to the legislature in retaining provision allowing tax collection of $1 for each conveyance of land sold to individuals for taxes, in amending Code 1942, § 3936(d) by Laws 1944, ch. 179, § 1(D), subsection (d), in view of the fact that Code 1942, §§ 3936 and 9958 were enacted together in the Codes of 1930 and 1942, especially in view of the fact that Code 1942, § 9936 re-enacted Code 1930, § 3256, and enlarged rather than diminished the effect of lists of lands sold for taxes by providing that it should have the same effect of notice as a deed filed for record. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

Under this section [Code 1942, § 9958], negative limitations or restrictions, such as restrictions pertaining to the value of a building to be built on the land, contained in the deed of the remote vendor were extinguished by the valid assessment and valid sale of the land in its entirety for taxes, although a different case would be presented if the tax had been levied upon some interest in the real estate less than the whole. City of Jackson v. Ashley, 189 Miss. 818, 199 So. 91 (1940).

Statute prescribing form of deed must be construed with other sections. Lamar Life Ins. Co. v. Billups, 175 Miss. 771, 169 So. 32 (1936).

Purchaser of land at tax sale does not receive land free from lien of drainage assessments thereon. Howie v. Panola-Quitman Drainage Dist., 168 Miss. 387, 151 So. 154 (1933).

The list of lands sold to the state for taxes is the foundation of a state's title to the land, and a person relying upon a deed from the state must introduce the list of the lands. Houston Bros. v. Lenhart, 136 Miss. 841, 101 So. 289 (1924).

Where the lessee of sixteenth section land had sold the timber to one who paid the taxes thereon, a purchaser at the tax sale of the leasehold interest acquired only the soil. Caston v. Pine Lumber Co., 110 Miss. 165, 69 So. 668 (1915).

A person who purchased the timber on sixteenth section land from the lessee, paid taxes on the timber and subsequently purchased it from the board of supervisors became the owner of such timber notwithstanding the sale of the leasehold interest for taxes. Caston v. Pine Lumber Co., 110 Miss. 165, 69 So. 668 (1915).

So long as a tax sale remains in fieri the collector has power to deal further with the lands. He may resell or permit the owner to pay the taxes, including costs and damages. Burroughs v. Vance, 75 Miss. 696, 23 So. 548 (1898).

Selling land for taxes and striking it off to the state will not vest title, but the certified list is essential. It is an economic substitute for deeds. Mayson v. Banks, 59 Miss. 447 (1882).

A certified copy of the list filed with the auditor is admissible in evidence in all cases where the original would be. Gamble v. Witty, 55 Miss. 26 (1877).

2. Rights of tax title holder, generally.

Where a purchaser bought land at a tax sale, which was unredeemed, the error of the clerk, in including more property than he was authorized to convey did not defeat the conveyance as to that part rightfully conveyed. Williamson v. DeBruce, 213 Miss. 530, 57 So. 2d 167 (1952).

The clerk's deed merely confers the right to possession, as well as evidencing that the period of redemption has expired and that the land was not redeemed, in view of the fact that by virtue of Code 1942, § 9936 the tax collector's list of tax sales confers on the purchaser an inchoate right in the land defeasible only by redemption. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

A tax title holder may not recover statutory penalty for cutting trees by delinquent owner who intended to redeem the land. Murphy v. Seward, 145 Miss. 713, 110 So. 790 (1926).

A delinquent owner, who cuts timber on land sold for taxes with bona fide intention to redeem the land, is not subject to statutory penalty for trespass. Murphy v. Seward, 145 Miss. 713, 110 So. 790 (1926).

The tax title holder who enters on land without the delinquent owner's consent before the expiration of redemption period is a trespasser. Murphy v. Seward, 145 Miss. 713, 110 So. 790 (1926).

3. Validity of sale; effect of invalid sale.

Where a tract of land was sold for taxes, and part of that tract on which taxes were paid was separable from the balance of the tract, the sale was not void in toto, but it was void only as to that portion on which taxes had been paid. Richton Tie & Timber Co. v. McWilliams, 218 Miss. 355, 67 So. 2d 374 (1953).

In absence of a statutory provision to the contrary a sale of tract of land for the whole of the taxes assessed, when part of the taxes thereon had been paid, renders the sale void. Richton Tie & Timber Co. v. McWilliams, 218 Miss. 355, 67 So. 2d 374 (1953).

Where sale for taxes is void and passes no title, there can be no redemption. Seward v. Dogan, 198 Miss. 419, 21 So. 2d 292 (1945).

Tax sales of an entire tract of land lying in two sections to two purchasers, each of whom purchased land in one section for the amount of taxes due thereon, were void, in view of the fact that statute contemplated one sale for the aggregate amount of taxes due on entire tract. Carter v. Moore, 183 Miss. 112, 183 So. 512 (1938).

The fact that tax deeds in statutory form recited that the sale for nonpayment of taxes was "according to law," although in fact they conveyed distinct parts of a single tract, did not validate sales made in violation of the statute requiring that a single tract should be sold for nonpayment of taxes due thereon at one sale, since such phrase was not a statement of fact but a mere conclusion or opinion and must yield to the positive statement of facts in the deed, which showed in unmistakable terms that two sales were made instead of one, each for a separate and distinct consideration. Carter v. Moore, 183 Miss. 112, 183 So. 512 (1938).

Fees for tax deed were not "costs of tax sale," and failure of bid to cover such fees did not invalidate sale. Crorow Hardwood Co. v. Moye, 161 Miss. 642, 137 So. 493 (1931).

Order increasing assessment, if void, should be disregarded, thereby leaving original assessment in force. Tatum v. Smith, 158 Miss. 511, 130 So. 683 (1930).

Where fact that a tax receipt had been erroneously marked "paid" showing that the taxes had been paid on said land would not invalidate the sale of the lands for said taxes, the receipt having been corrected before sale. Brown v. Clark, 138 Miss. 496, 103 So. 211 (1925).

This section [Code 1942, § 9958] was not intended to apply to tax sales of land where there was a total departure from the statute describing the fundamentals of the assessment in sales of land for taxes. Womack v. Central Lumber Co., 131 Miss. 201, 94 So. 2 (1922).

One relying on a tax title must show its validity by showing that the requirements of the law providing for its sale were strictly complied with. Dunbar v. Interior Lumber Co., 102 Miss. 623, 59 So. 852 (1912).

Where a 120-acre tract of land was assessed together at the same value per acre and 80 acres thereof was paid upon, the sale of the remaining 40 acres for one-third of the taxes unpaid will be held valid. North v. Culpepper, 97 Miss. 730, 53 So. 419 (1910).

The statute providing that only certain defenses shall be made to a tax title presupposes a valid assessment of the land. Reed v. Heard, 97 Miss. 743, 53 So. 400 (1910).

But an assessment and sale of two tracts of land was not rendered void by the fact that the assessment was in solido to an unknown owner, the argument that any harm could come to the owner of either parcel by the joint assessment being unsound, since the owner would not have to pay on all or redeem all. Moores v. Thomas, 95 Miss. 644, 48 So. 1025 (1909).

The Chickasaw school lands granted to the state by act of Congress in lieu of the 16th section land for the use and benefit of schools have never been subject to taxation and all attempts to sell them for taxes were void. Edwards v. Butler, 89 Miss. 179, 42 So. 381 (1906).

A sale of swamp and overflowed lands to the state for taxes, which lands were never subject to taxation, and a subsequent conveyance thereof as forfeited tax land by the land commissioner gave no title. Howell v. Miller, 88 Miss. 655, 42 So. 129 (1906).

A tax sale of land containing several subdivisions, which were owned in severalty by different persons, was void where it was assessed as a single tract to an unknown owner, and was sold in solido and was purchased by one of the owners. Howell v. Shannon, 80 Miss. 598, 31 So. 965, 92 Am. St. R. 609 (1902).

The provisions of this section [Code 1942, § 9958] do not cure a sale which is void because the tax collector failed to properly describe the several forty-acre subdivisions offered for sale. Nelson v. Abernethy, 74 Miss. 164, 21 So. 150 (1896).

But such sale is protected by a statute providing that "a suit shall not be commenced in any court of this state to invalidate any tax titles to land after three years from the time the land was sold for taxes." Nevin v. Bailey, 62 Miss. 433 (1884).

A tax sale made on a day other than that provided by law confers no title. McGehee v. Martin, 53 Miss. 519 (1876).

4. —Restrictions on right to purchase at tax sale.

Mortgagee may not, as long as relation of mortgagor and mortgagee exists, obtain title to property by means of tax sale as against mortgagor, at least where mortgagee has merely lien on mortgaged property and where he can, if he chooses, pay taxes upon default of mortgagor and add amount so paid to his claim. Perkins v. White, 208 Miss. 157, 43 So. 2d 897 (1950).

Mortgagee's acquisition of tax title to mortgaged property does not inure to benefit of mortgagors or their grantees when the relationship of mortgagor and mortgagee terminated prior to acquisition of tax title, as fiduciary relationship between parties no longer existed. Perkins v. White, 208 Miss. 157, 43 So. 2d 897 (1950).

A chancery clerk cannot purchase land at a tax sale because of his official connection therewith. Barker v. Jackson, 90 Miss. 621, 44 So. 34 (1907).

Nor may a tax collector purchase at his own sale. McLeod v. Burkhalter, 57 Miss. 65 (1879).

5. —Rights of purchaser at invalid sale.

A person holding state lands under a tax sale which was void and who in good faith made improvements thereon is entitled to reimbursement therefor on recovery of the land by the true owner. Edwards v. Butler, 94 Miss. 678, 47 So. 801 (1908).

A purchaser at a tax sale which is void because the land is not taxable, who causes the assessment on which such a sale is made to be changed to himself and the land is assessed to him at the next assessment, is estopped to purchase at a subsequent tax sale made on such new assessment. Smith v. Cassedy, 75 Miss. 916, 23 So. 427 (1898).

6. —Payment or tender of taxes.

If order increasing taxes was void, tax sale was valid where taxpayer did not tender taxes due under original assessment. Tatum v. Smith, 158 Miss. 511, 130 So. 683 (1930).

Where a taxpayer seasonably tendered to the tax collector the full amount of taxes on his land and the tender was refused, the officer leading the taxpayer to believe that the taxes had been paid by another, a sale of the land thereafter for said taxes will be void. Brannon v. Lyon, 86 Miss. 401, 38 So. 609 (1905).

A double assessment and payment of taxes on land by one description may be shown by parol evidence to invalidate a tax sale by the other description. Trager v. Jenkins, 75 Miss. 676, 23 So. 424 (1898).

Parol evidence is admissible to show that lands mentioned in a tax receipt by a Spanish grant description are the same lands assessed and sold for taxes by a government survey description showing section, township and range. Trager v. Jenkins, 75 Miss. 676, 23 So. 424 (1898).

If a tract of land, part of which is exempt from taxation, be sold as a whole, the title is good to the part not exempt unless it be shown that the tax due on that part was tendered before sale. Lewis v. Vicksburg & M.R. Co., 67 Miss. 82, 6 So. 773 (1889).

Where, at the time land was sold to the state for taxes, there was no statute which required the owner of land sold for taxes to pay or tender to the tax collector before the sale the amount of tax legally chargeable on the land, as a condition precedent to his right to have the title invalidated on account of a part of the tax being illegal, statutes subsequently passed, to that effect, were properly construed to operate prospectively and not retroactively. Capital State Bank v. Lewis, 64 Miss. 727, 2 So. 243 (1887).

It is no defense under the statute to a tax title that the levy of taxes was excessive, unless the taxpayer tendered before sale the true amount due. Gibbs v. Dortch, 62 Miss. 671 (1885); Corburn v. Crittenden, 62 Miss. 125 (1884); Carter v. Hadley, 59 Miss. 130 (1881).

A tender is unnecessary if there had been no assessment which is valid. Davis v. Vanarsdale, 59 Miss. 367 (1882).

7. —Limitation of time for redemption, as affected by invalidity of sale.

Delay did not estop true owner from asserting title against purchaser at invalid tax sale where tax purchaser made no improvements, or any expenditures or otherwise changed his position, except for payment of taxes subsequent to sale, which amount was offset by sums received as cash consideration for oil and gas lease and by rents paid by tenants. Walker v. Polk, 208 Miss. 389, 44 So. 2d 477 (1950).

A section providing that actual occupation for the statutory time after two years from the day of sale of land held under conveyance by tax collector in pursuance of tax sale should bar suit to recover land or assail title because of any defect in sale was held to be merely a statute of limitations, and possession for the specified period was held to bar an action for the recovery of land sold for taxes, notwithstanding Code 1892, § 3817 (Code 1942, § 9958). Hamner v. Yazoo Delta Lumber Co., 100 Miss. 349, 56 So. 466 (1911).

Statute of limitations as to time within which to redeem cannot cure a tax sale absolutely void for power to sell. Seals v. Perkins, 96 Miss. 704, 51 So. 806 (1910).

The statute of limitations has no application to an illegal sale of land by a chancery clerk at a tax sale. Barker v. Jackson, 90 Miss. 621, 44 So. 34 (1907).

8. Effect of defects in tax deed.

Those grounds specifically enumerated in the statute for invalidation of a tax deed must be considered exclusive, and since they follow immediately the provision in the statute prescribing the formalities of execution, they negative any suggestion that a defect or informality in the mode of execution renders the instrument void. Stark v. Stark, 244 So. 2d 13 (Miss. 1971).

It is manifest from the statute that it was not the legislative intent to permit a mere formal error or omission in the execution of a deed to frustrate the entire statutory process whereby land is sold according to law at the proper time and place for delinquent taxes duly assessed thereon, where such taxes have remained unpaid and the redemption has expired. Stark v. Stark, 244 So. 2d 13 (Miss. 1971).

A deed relating to a tax sale was valid where the original thereof bore the seal of the chancery clerk, where the deed was properly signed and acknowledged by the chancery clerk and place of record, where an adequate description of the land appeared in the deed, and where no issue was made by the pleadings that the land was not liable to sale for delinquent taxes, or that the taxes for which it was sold had been paid before sale, or that the sale had been made at a wrong time or place. Stark v. Stark, 244 So. 2d 13 (Miss. 1971).

Affixation of the seal to a tax deed must be relegated to that class of ministerial functions as to which the clerk is without discretion, where the conditions required by statute to exist before issuance of the deed do in fact exist, and in such a case he may be required in proper proceedings to execute and deliver a deed to the purchaser. Stark v. Stark, 244 So. 2d 13 (Miss. 1971).

Where a tax deed was acknowledged before circuit clerk with the seal of circuit court and also where the seal of chancery court in custody of chancery clerk was also affixed to the deed when executed but was erroneously placed over part of circuit clerk's acknowledgment about three inches below chancery clerk's signature to the deed, the tax deed was not void for want of proper seal where the deputy chancery clerk testified that the purpose of the seal of the chancery court was to show that it was recorded under the seal of the chancery clerk and that the chancery clerk had only one seal which was the one used on the instrument. Loper v. Hinds Land Co., 214 Miss. 644, 58 So. 2d 88 (1952), suggestion of error overruled, opinion modified, 214 Miss. 644, 59 So. 2d 326 (1952).

The word "conveyance" as used in Code 1942, § 716, which provides that three years' actual occupation of land held under a conveyance by a tax collector shall bar suit to recover such land, does not necessarily mean a deed of conveyance to be executed by the chancery clerk under Code 1942, § 995-a providing for execution of deeds of conveyance to individuals purchasing land at tax sales. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229 (1951).

Conveyance from chancery clerk is not necessary to transfer title to the tax purchaser when the sheriff and tax collectors' list of the tax sale has been duly made and filed with the chancery clerk. Powe v. Brantley, 210 Miss. 627, 50 So. 2d 229 (1951).

Tax deed executed by chancery clerk showing on its face that land had not been sold at time required by statute, held invalid. Bailey v. McRae, 176 Miss. 557, 169 So. 887 (1936).

And in a case of a patent ambiguity in the description of the land in the assessment and tax deed parol evidence will not be admitted to make a description. Reed v. Reed, 98 Miss. 350, 53 So. 691, Am. Ann. Cas. 1913A,1194 (1910).

A tax deed containing a patent ambiguity in the description of the land sought to be conveyed is void and is not helped by this section [Code 1942, § 9958]. Smith v. Brothers, 86 Miss. 241, 38 So. 353 (1905).

The provision for the name of the owner in a tax deed under this section [Code 1942, § 9958] is merely directory. Pattison v. Harvey, 81 Miss. 348, 33 So. 941 (1902).

ATTORNEY GENERAL OPINIONS

A purchaser at a tax sale is not required to redeem the property from subsequent tax sales at which he bought the property to obtain a deed from the chancery clerk when the period of redemption has expired. Amos, Aug. 31, 2001, A.G. Op. #01-0472.

A chancery clerk may only issue a tax deed on a parcel of property as it was sold at the tax sale to the purchaser after the period of redemption has expired; thus, where a single parcel that contained two lots were assessed as one parcel and sold at a tax sale as one parcel, a tax deed could be issued to the purchaser on the entire parcel. Peacock, III, Oct. 19, 2001, A.G. Op. #01-0568.

The chancery clerk of a county has the authority to execute a tax deed to taxpayer A for a tax sale in 2000. This is true even though the request for this deed was made in 2003, at which time the property belonged to B by virtue of a subsequent tax sale in 2001, which matured in 2003. McGee, Nov. 13, 2003, A.G. Op. 03-0597.

A tax deed may be issued on a parcel of property without all prior taxes being paid. Jefferson Davis County Tax Assessor, Apr. 2, 2004, A.G. Op. 04-0135.

The language of this section is mandatory, not permissive, and the execution of the deed is not left to the discretion of the clerk. Once the period of redemption has expired, this section does not limit the time period during which the demand must be made nor the deed executed. Johnson, Aug. 27, 2004, A.G. Op. 04-0244.

This section clearly indicates that the tax deed only conveys the interest the tax sale purchaser acquired at a specified tax sale. That is, the tax deed is not a warranty deed. However, the interest acquired by a tax sale purchaser is subject to the judicial challenges authorized by law. Johnson, Aug. 27, 2004, A.G. Op. 04-0244.

The chancery clerk acted correctly in not permitting a subsequent purchaser at a tax sale, to redeem the year's taxes paid by a prior purchaser at a tax sale, because the two year period therefor had already expired. Johnson, Aug. 27, 2004, A.G. Op. 04-0244.

RESEARCH REFERENCES

ALR. Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 A.L.R.4th 447.

Easement, servitude, or covenant as affected by sale for taxes. 7 A.L.R.5th 187.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 883 et seq.

17 Am. Jur. Legal Forms 2d, State and Local Taxation §§ 238:74, 238:75 (tax deed).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 211 et seq. (sale of property for nonpayment of taxes generally); Forms 231 et seq. (invalid sale or delivery of property).

CJS. 85 C.J.S., Taxation § 1523 et seq.

§ 27-45-25. Duplicate of conveyance or release lost or destroyed.

When any release upon redemption or conveyance of tax land made by the chancery clerk shall be lost or destroyed, upon application of the person injured, the chancery clerk may make a duplicate release or conveyance of the same land to the person to whom the first was made, which shall be in lieu of the former; and it shall be marked "duplicate," and shall have the same effect.

SOURCES: Codes, 1880, § 568; 1892, § 3858; 1906, § 2938; Hemingway's 1917, § 5273; 1930, § 3274; 1942, § 9959.

Cross References — How lost or destroyed record of deed supplied, see §§ 25-55-3 et seq.

§ 27-45-27. Rights of purchaser at tax sale; effect of lien; liability of county or municipal officers to purchasers.

(1) The amount paid by the purchaser of land at any tax sale thereof for taxes, either state and county, levee or municipal, and interest on the amount paid by the purchaser at the rate of one and one-half percent (1-½%) per month, or any fractional part thereof, and all expenses of the sale and registration, thereof shall be a lien on the land in favor of the purchaser and the holder of the legal title under him, by descent or purchase, if the taxes for

which the land was sold were due, although the sale was illegal on some other ground. The purchaser and the holder of the legal title under him by descent or purchase, may enforce the lien by bill in chancery, and may obtain a decree for the sale of the land in default of payment of the amount within some short time to be fixed by the decree. In all suits for the possession of land, the defendant holding by descent or purchase, mediately or immediately, from the purchaser at tax sale of the land in controversy, may set off against the complainant the above-described claim, which shall have the same effect and be dealt with in all respects as provided for improvements in a suit for the possession of land. But the term "suits for the possession of land," as herein used, does not include an action of unlawful entry and detainer.

(2) No county or municipal officer shall be liable to any purchaser at a tax sale or any recipient of a tax deed for any error or inadvertent omission by such official during any tax sale.

SOURCES: Codes, 1871, § 1718; 1880, § 536; 1892, § 3830; 1906, § 4345; Hemingway's 1917, § 6979; 1930, § 3275; 1942, § 9960; Laws, 1932, ch. 286; Laws, 1995, ch. 468, § 16, eff from and after passage (approved March 27, 1995).

Cross References — Unlawful entry and detainer action by purchaser at tax sale, see § 11-25-3 et seq.

Conveyance by tax deed, see § 27-45-23.

Rights of purchase money mortgagee, see § 89-1-45.

JUDICIAL DECISIONS

1. In general.
2. Application.

1. In general.

Fees for tax deed were not "costs of tax sale," and failure of bid to cover such fees did not invalidate sale. Crorow Hardwood Co. v. Moye, 161 Miss. 642, 137 So. 493 (1931).

Upon rendition of a decree in complainant's favor quieting title to lands, the court properly allowed the defendant the sum paid by him as purchaser at tax sale, with the statutory damages. McMahon v. Yazoo Delta Lumber Co., 92 Miss. 459, 43 So. 957 (1907).

The purchaser cannot be denied the lien because the assessment was invalid on the idea that the taxes were "not due." Kaiser v. Harris, 63 Miss. 590 (1886).

Where land was sold to the state for taxes legally due and the auditor undertook to sell the land before the expiration of the time for redemption and did execute a deed, the would-be purchaser has a lien under the statute, but if the original owner made application to redeem within the time allowed, the lien would be restricted to the amount which the owner would have been required to pay to redeem. McLaran v. R. Moore & Co., 60 Miss. 376 (1882).

The tax purchaser whose deed is void because of a patent ambiguity in the description of the land which description was also in the assessment, may in equity charge the land for the amount paid by him for taxes on the same, where he can show clearly what land was sold to him and that it was at the time delinquent, and in making such proof, may resort to other evidence than that afforded by the assessment roll and the tax deed. Cogburn v. Hunt, 56 Miss. 718 (1879).

Except in a case where the state and county refund the money received by them respectively, the tax purchaser, if from any cause he fail to get title, may charge the land. Cogburn v. Hunt, 56 Miss. 718 (1879).

A purchaser at a tax sale to whom the land is thereafter assessed, and who is compelled to pay the taxes after its redemption from his tax sale, has a lien for money thus exacted. Ingersoll v. Jeffords, 55 Miss. 37 (1877).

2. Application.

Trial court erred in dismissing a tax-sale purchaser's complaint for lack of standing because the trial clerk's failure to comply with the statutory notice requirements rendered the tax sale void, the purchaser held an interest in the property as a statutory lienholder, which gave it standing to challenge the trial clerk's compliance with the notice statutes, and the doctrine of caveat emptor did not bar the purchaser's suit, as the tax-sale statutes specifically provided for the remedy the purchaser sought. Sass Muni-V, LLC v. Desoto County, 170 So. 3d 441 (Miss. 2015).

In a quiet title action arising from a tax sale that had been declared void as to a lienholder, the buyer argued that the chancellor erred in failing to award it damages. While Miss. Code. Ann. § 27-43-11 provided that the buyer was entitled to a refund of the taxes that it had paid, the record did not reflect that the buyer had filed for a refund as required, and Miss. Code Ann. § 27-45-27(1) did not mean that, since the tax sale was rendered void as to one lienholder, but not to others, the buyer could recover statutory damages against the non-voided lienholder. SKL Invs., Inc. v. Am. Gen. Fin., Inc., 22 So. 3d 1247 (Miss. Ct. App. 2009).

ATTORNEY GENERAL OPINIONS

Tax sale creates lien on land running in favor of purchaser and holder of legal title under him by descent or purchase; purchaser of record is required to convey his interest to other party before county is legally authorized to acknowledge change of interests in real estate. Walker, Jan. 24, 1990, A.G. Op. #90-0002.

Since parcel in question was in bankruptcy, tax deed could not be issued to tax sale purchaser; however, tax sale purchaser would have lien on property for amount of 1992 taxes he paid, plus interest. Martin, Feb. 16, 1994, A.G. Op. #93-0868.

Section 27-45-27 provides that the interest that is due to the purchaser upon redemption by an owner only applies to the amount actually paid by the purchaser at the tax sale and thereafter. James, August 31, 1995, A.G. Op. #95-0459.

Upon redemption by a land owner, a chancery clerk should not collect sums paid in redemption of prior sales by the purchaser at the tax sale from which the property is being redeemed. Brister, Nov. 14, 1997, A.G. Op. #97-0712.

RESEARCH REFERENCES

ALR. Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 A.L.R.4th 447.

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 857 et seq., 941 et seq.

2 Am. Jur. Pl & Pr Forms (Rev), Assistance, Writ of, Form 3 (petition for writ of assistance to obtain possession after tax sale).

22 Am. Jur. Pl & Pr Forms (Rev), State and Local Taxation, Forms 211 et seq. (sale of property for nonpayment of taxes generally); Forms 231 et seq. (invalid sale or delivery of property).

CJS. 85 C.J.S., Taxation § 1468 et seq.

§ 27-45-29. Lands sold by municipalities.

In cases of land and other property sold by municipal tax authorities for delinquent taxes, the same schedule of damages as provided herein shall apply.

SOURCES: Codes, 1942, § 9961; Laws, 1932, ch. 286.

Cross References — Recording lists of land sold for municipal taxes, see § 21-33-63.

RESEARCH REFERENCES

ALR. Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party. 45 A.L.R.4th 447.

CHAPTER 47

Ad Valorem Taxes—Assignment of Tax Liens

Sec.
27-47-1 through 27-47-31. Repealed.

§§ 27-47-1 through 27-47-31. Repealed.

Repealed by Laws, 2003, ch. 381, § 1, eff from and after July 1, 2003.

§ 27-47-1. [Codes, 1942, § 9963; Laws, 1931, ch. 13; Laws, 1968, ch. 361, § 45, eff from and after January 1, 1972.]
§ 27-47-3. [Codes, 1942, § 9964; Laws, 1931, ch. 13.]
§ 27-47-5. [Codes, 1942, § 9965; Laws, 1931, ch. 13.]
§ 27-47-7. [Codes, 1942, § 9966; Laws, 1931, ch. 13.]
§ 27-47-9. [Codes, 1942, § 9967; Laws, 1931, ch. 13.]
§ 27-47-11. [Codes, 1942, § 9968; Laws, 1931, ch. 13.]
§ 27-47-13. [Codes, 1942, § 9969; Laws, 1931, ch. 13.]
§ 27-47-15. [Codes, 1942, § 9970; Laws, 1931, ch. 13.]
§ 27-47-17. [Codes, 1942, § 9971; Laws, 1931, ch. 13.]
§ 27-47-19. [Codes, 1942, § 9972; Laws, 1931, ch. 13.]
§ 27-47-21. [Codes, 1942, § 9973; Laws, 1931, ch. 13.]
§ 27-47-23. [Codes, 1942, § 9974; Laws, 1931, ch. 13.]
§ 27-47-25. [Codes, 1942, § 9975; Laws, 1931, ch. 13.]
§ 27-47-27. [Codes, 1942, § 9976; Laws, 1931, ch. 13.]
§ 27-47-29. [Codes, 1942, § 9977; Laws, 1931, ch. 13.]
§ 27-47-31. [Codes, 1942, § 9978; Laws, 1931, ch. 13.]

Editor's Note — Former §§ 27-47-1 through 27-47-31 provided for the authority, procedure, and requirements relating to the assignment of tax liens pertaining to property for which ad valorem taxes are owed; specifically:

Former § 27-47-1 was entitled: "Assignment of lien upon payment of tax by third person."

Former § 27-47-3 was entitled: "Form of assignment."

Former § 27-47-5 was entitled: "Recording of assignment; notice to mortgage or other lien holders."

Former § 27-47-7 was entitled: "Interest on assignment."

Former § 27-47-9 was entitled: "Defenses waived."

Former § 27-47-11 was entitled: "Assignment negotiable."

Former § 27-47-13 was entitled: "Enforcement of lien by assignee."

Former § 27-47-15 was entitled: "Payment of other taxes; lien."

Former § 27-47-17 was entitled: "Sale to pay assignment."

Former § 27-47-19 was entitled: "Sale; assignee purchaser."

Former § 27-47-21 was entitled: "Other remedies."

Former § 27-47-21 was entitled: "Other remedies."

Former § 27-47-23 was entitled: "Cancellation of lien on part of property."

Former § 27-47-25 was entitled: "Release of part of property."

Former § 27-47-27 was entitled: "Void taxes or assignments."

Former § 27-47-29 was entitled: "Loans exempt from taxes."

Former § 27-47-31 was entitled: "Construction."

CHAPTER 49

Ad Valorem Taxes—Insolvencies

Sec.
27-49-1. Report by tax collector of insolvent and delinquent taxpayers; lists of delinquent taxpayers.
27-49-3. Preparation of insolvent list by board of supervisors.
27-49-5. Allowance of credits.
27-49-7. Examination of report by board of supervisors.
27-49-9. Collection of taxes.

§ 27-49-1. Report by tax collector of insolvent and delinquent taxpayers; lists of delinquent taxpayers.

The tax collector shall present to the board of supervisors, at its meeting on the first Monday of October in each year, a report of all insolvent and delinquent taxpayers in his county, with the amount due from each. Such report shall be verified by the affidavit of the collector, that he has made, in person or by deputy, a legal demand for taxes of all delinquent taxpayers found in his county by going to their place of abode or business and searching for something to seize and sell for taxes; that the taxpayers mentioned in the report have failed to pay their taxes; that such taxpayers have no effects known to him which can be seized and sold for such taxes; that he has made diligent inquiry after such of said delinquents as have not been found and cannot find them in his county; and that they have no effects known to him which can be seized and sold to pay their taxes. The tax collector shall also include in his report any checks, drafts or orders for the payment of money which he has received in payment of ad valorem taxes and which have been returned to him because of insufficient funds in the account on which such checks, drafts or orders were drawn. Such checks, drafts or orders shall be accompanied by the affidavit of the collector that he has exhausted all legal means of collecting such instruments, including the filing of a civil suit.

Separate lists of delinquents shall be made for each election district and for each city, town and village.

SOURCES: Codes, 1942, § 9983; Laws, 1934, ch. 188; Laws, 1988, ch. 376, eff from and after July 1, 1988.

JUDICIAL DECISIONS

1. In general.
2. Suits against tax collector.
3. Suits by tax collector.

1. In general.

Tax collector is not required to pay over taxes he fails to collect because of insolvency. Bishop v. Chickasaw County, 182 Miss. 147, 180 So. 395 (1938).

Presumption existed tax collector and supervisors complied with law regarding insolvencies. Bishop v. Chickasaw County, 182 Miss. 147, 180 So. 395 (1938).

2. Suits against tax collector.

Orders entered by board of supervisors as matter of perfunctory routine, making allowance for insolvent delinquent taxes, held not binding in suit to recover from county tax collector amount of alleged shortage. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

In suit against county tax collector to recover alleged shortage, orders of board of supervisors, making insolvent delinquent tax allowances, held matter of affirmative defense belonging to answer. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

Where county tax collector being sued for alleged shortage did not in answer rely on orders of supervisors making insolvency allowances, state tax collector held not required to charge fraud regarding orders. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

The minutes of the board of supervisors allowing insolvencies and the assessment roll cannot be contradicted by parol proof in an action by the state revenue agent against a tax collector. Whitman v. Owen, 76 Miss. 783, 25 So. 669 (1899).

3. Suits by tax collector.

Tax collector's bill to recover amount of insolvent list allowed by supervisors did not state cause of action where it did not allege amount had been paid over in cash and was sought as refund. Bishop v. Chickasaw County, 182 Miss. 147, 180 So. 395 (1938).

ATTORNEY GENERAL OPINIONS

There is no statutory or precedential prohibition precluding vendor who is listed on insolvent and delinquent taxpayer report prepared pursuant to Section 27-49-1 from bidding on public contracts. Barry, Feb. 24, 1994, A.G. Op. #93-0964.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 753.

6 Am. Jur. Proof of Facts, Insolvency, Proof No. 1 (insolvency in involuntary bankruptcy proceedings).

6 Am. Jur. Proof of Facts, Insolvency, Proof No. 2 (inability to pay debts in the usual course of business).

CJS. 84 C.J.S., Taxation § 1178.

§ 27-49-3. Preparation of insolvent list by board of supervisors.

If the board of supervisors fails to meet on the first Monday in October, its duties with regard to the insolvent list shall be performed at its next meeting thereafter.

SOURCES: Codes, 1942, § 9984; Laws, 1934, ch. 188.

§ 27-49-5. Allowance of credits.

The board shall proceed to examine the report and shall allow the collector a credit for such of the taxes so reported insolvent or delinquent, as it may be satisfied remain uncollected without the default of the collector, and no more. A list of the allowances shall be made out and certified by the clerk and transmitted to the auditor of public accounts, on or before the first day of September following, and shall be credited to the collector in his settlement with the auditor and chancery clerk.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 17 (38); 1857, ch. 3, art. 56; 1871, § 1721; 1880, § 541; 1892, § 3833; 1906, § 4351; Hemingway's 1917, § 6985; 1930, § 3280; 1942, § 9985.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14, Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Recovery on claim unlawfully acquired by public officer, see § 25-1-49.

Tax collector's credits generally, see § 27-29-1.

JUDICIAL DECISIONS

1. In general.
2. Suits against tax collector.
3. Suits by tax collector.

1. In general.

Tax collector is not required to pay over taxes he fails to collect because of insolvency. Bishop v. Chickasaw County, 182 Miss. 147, 180 So. 395 (1938).

Presumption existed tax collector and supervisors complied with law regarding insolvencies. Bishop v. Chickasaw County, 182 Miss. 147, 180 So. 395 (1938).

2. Suits against tax collector.

Orders entered by board of supervisors as matter of perfunctory routine, making allowance for insolvent delinquent taxes, held not binding in suit to recover from county tax collector amount of alleged shortage. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

In suit against county tax collector to recover alleged shortage, orders of board of supervisors, making insolvent delinquent tax allowances, held matter of affirmative defense belonging to answer. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

Where county tax collector being sued for alleged shortage did not in answer rely on orders of supervisors making insolvency allowances, state tax collector held not required to charge fraud regarding orders. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

3. Suits by tax collector.

Tax collector's bill to recover amount of insolvent list allowed by supervisors did not state cause of action where it did not allege amount had been paid over in cash and was sought as refund. Bishop v. Chickasaw County, 182 Miss. 147, 180 So. 395 (1938).

§ 27-49-7. Examination of report by board of supervisors.

The board of supervisors shall not allow to the collector a credit for the insolvent list he reports, merely because he presents it duly sworn to, but the board shall examine carefully each election district and city, town, or village list as reported, and shall scrutinize each name and amount reported insolvent, and shall use any knowledge had by any member of the board, and avail of any information by witnesses to test the accuracy of the report. The board shall not allow the collector credit for the taxes of any delinquent who may be ascertained to have anything in possession or in action by a sale of which the collector would be able to make the taxes; and all of the list for which the board shall not allow a credit shall be charged against the collector.

SOURCES: Codes, 1880, § 542; 1892, § 3834; 1906, § 4352; Hemingway's 1917, § 6986; 1930, § 3281; 1942, § 9986.

JUDICIAL DECISIONS

1. In general.

Tax collector is not required to pay over taxes he fails to collect because of insolvency. Bishop v. Chickasaw County, 182 Miss. 147, 180 So. 395 (1938).

Orders entered by board of supervisors as matter of perfunctory routine, making allowance for insolvent delinquent taxes, held not binding in suit to recover from county tax collector amount of alleged shortage. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

In suit against county tax collector to recover alleged shortage, orders of board of supervisors, making insolvent delinquent tax allowances, held matter of affirmative defense belonging to answer. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

Where county tax collector being sued for alleged shortage did not in answer rely on orders of supervisors making insolvency allowances, state tax collector held not required to charge fraud regarding orders. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

§ 27-49-9. Collection of taxes.

Notwithstanding the allowance of insolvencies, the tax collector shall, if possible, collect the taxes of all insolvent and delinquent taxpayers. He shall retain a copy of the list reported by him, and whenever he can find any property, real or personal, belonging to the defendant, he shall distrain and sell the same, on five (5) days' notice, to the highest bidder, for cash, and shall pay over the same as other taxes collected. The auditor, on settlement with a tax collector, shall require of him to report, on oath, whether he has collected taxes from any, and which, of the delinquent taxpayers.

SOURCES: Codes, Hutchinson's 1848, ch. 8, art. 17 (44); 1857, ch. 3, art. 58; 1871, § 1723; 1880, § 544; 1892, § 3836; 1906, § 4354; Hemingway's 1917, § 6988; 1930, § 3283; 1942, § 9987.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal

Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

JUDICIAL DECISIONS

1. In general.

Presumption existed that tax collector and supervisors complied with law regarding insolvencies. Bishop v. Chickasaw County, 182 Miss. 147, 180 So. 395 (1938).

Orders entered by board of supervisors as matter of perfunctory routine, making allowance for insolvent delinquent taxes, held not binding in suit to recover from county tax collector amount of alleged shortage. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

In suit against county tax collector to recover alleged shortage, orders of board of supervisors, making insolvent delinquent tax allowances, held matter of affirmative defense belonging to answer. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

Where county tax collector being sued for alleged shortage did not in answer rely on orders of supervisors making insolvency allowances, state tax collector held not required to charge fraud regarding orders. Carr v. Miller, 162 Miss. 760, 139 So. 851 (1932).

ATTORNEY GENERAL OPINIONS

Miss. Code Section 27-49-9 requires collection of taxes on personal property of insolvent and delinquent taxpayers "whenever [the tax collector] can find any property, real or personal, belonging to the taxpayer"; this requirement does not apply if obligation has been stayed or released pursuant to bankruptcy proceedings. Sanders, Mar. 4, 1993, A.G. Op. #93-0100.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 753.

CJS. 84 C.J.S., Taxation § 1178.

CHAPTER 51

Ad Valorem Taxes—Motor Vehicles

In General 27-51-1
Motor Vehicle Ad Valorem Tax Credit 27-51-101

IN GENERAL

Sec.
27-51-1. Short title.
27-51-3. Purpose of chapter.
27-51-5. Definitions.
27-51-7. Persons liable for tax; time of payment; due date.
27-51-9. Taxable and fiscal years; taxes to be collected by county and municipal tax collectors; when to be paid; computation of tax.
27-51-11. Ad valorem tax receipts to be presented before road and bridge privilege license issued; reports; penalties; auditing of tax collectors.
27-51-13. Copy of tax levy to be furnished to county tax collector; postponement of collections where adoption of tax levy is delayed; notice to be given; owners not to be penalized.
27-51-15. Determination of assessed value.
27-51-17. County tax collector to be supplied with tax receipts; form of receipts; use of receipts.
27-51-19. Assessment schedule to be prepared by Department of Revenue; basis of schedule; corrections.
27-51-20. Repealed
27-51-21. Copy of assessment schedule to be forwarded to board of supervisors and municipal board; notice of inspection of schedule; hearings of petitions for reductions.
27-51-23. Filing and disposition of objections to assessment schedule and claims for adjustment; suits for taxes paid by dissatisfied taxpayers.
27-51-25. County tax collector's reports and records of tax collections; remittance of tax collections to municipalities.
27-51-27. Owner may receive credit for taxes paid when motor vehicle is destroyed; application and proof; perjury.
27-51-29. Procedure where municipality desires county tax collector to collect motor vehicle ad valorem taxes; fees; inspection of tax collector's records; penalties; liability of tax collector on official bond.
27-51-31. Owner liable for motor vehicle ad valorem taxes to make application for privilege license; contents; penalty for misstatements; liability of tax collector on official bond.
27-51-33. Tax assessors not required to assess motor vehicles; value of vehicles part of assessed value of personal property in county and municipality; effectiveness of order directing county tax collector to collect municipal taxes.
27-51-35. Preparation of assessment schedule where municipality elects not to adopt schedule prepared by state tax commission.
27-51-37. Duties of municipal tax assessor; proceedings by municipal board.
27-51-39. Objections to municipal assessment schedule and claims for adjustment; determination by board; suit for taxes paid by dissatisfied taxpayer.
27-51-41. Exemptions and credits; sale or other disposition of vehicle; penalties.
27-51-41.1. Exemption of percentage of true value of motorcycles, motor homes and trailers.

27-51-42.2. Exemption for active service volunteer fire fighters.
27-51-42.3. Repealed.
27-51-43. Highway safety patrol and other peace officers to check for violations of law; arrest and fines; penalty for unauthorized delay in payment of taxes.
27-51-45. Commissioner of Revenue may postpone time for preparing assessment schedule.
27-51-47. Rules and regulations.
27-51-49. Motor vehicle ad valorem taxes not provided for in chapter.

§ 27-51-1. Short title.

This chapter may be known as "The Motor Vehicle Ad Valorem Tax Law of 1958," and may be cited as such.

SOURCES: Codes, 1942, § 10007-01; Laws, 1958, ch. 588, § 1.

Cross References — Constitutional provision for taxing motor vehicles, see Miss. Const. Art. 4, § 112.

Municipal taxes, see § 21-33-1 et seq.

Issuance of road and bridge privilege tax license plates upon failure of municipality to levy ad valorem taxes, see § 21-33-45.

Motor vehicle privilege taxes, see § 27-19-1 et seq.

When taxes become lien, see § 27-35-1.

General county tax levy, see § 27-39-303.

When and how county taxes levied, see § 27-39-317.

When taxes are due, payable, and collectible generally, see § 27-41-1.

Mobile home ad valorem taxes, see § 27-53-1 et seq.

Gasoline and motor fuel taxes, see § 27-55-1 et seq.

Participation of county tax collectors in automated motor vehicle title registration system, see § 63-21-18.

ATTORNEY GENERAL OPINIONS

An annexation is final and effective for all purposes 10 days after issuance of the decree by the chancery court, or 10 days after final determination of an appeal, except that citizens residing in an annexed area may not participate in future municipal elections as electors or as candidates, unless and until pre-clearance by the U.S. Department of Justice is obtained pursuant to Section 5 of the Voting Rights Act. Mallette, March 2, 2007, A.G. Op. #07-00096, 2007 Miss. AG LEXIS 72, modifying Rafferty, November 27, 2006, A.G. Op. #06-00598, 2006 Miss. AG LEXIS 428, as to the effective date of annexation for all purposes other than voting and candidacy.

§ 27-51-3. Purpose of chapter.

The purpose of this chapter is, with reference to assessing ad valorem taxes on motor vehicles which are operated upon the public highways of this state, to, (a) fix the taxable year, (b) fix the tax lien date, (c) determine the method of assessing, (d) fix the date for assessing such taxes, (e) prescribe the method of collecting such taxes, and (f) fix the date of collecting such taxes.

SOURCES: Codes 1942, § 10007-02; Laws, 1958, ch. 588, § 2.

JUDICIAL DECISIONS

1. In general.

This division was enacted by the Mississippi legislature to implement the amendment of § 112 of the Mississippi Constitution, and to provide a special method of assessment and collection of taxes on motor vehicles. Snapp v. Neal, 250 Miss. 597, 164 So. 2d 752 (1964), rev'd on other grounds, 382 U.S. 397, 86 S. Ct. 485, 15 L. Ed. 2d 445 (1966).

§ 27-51-5. Definitions.

The subject words and terms of this section, for the purpose of this chapter, shall have meanings as follows:

(a) "Motor vehicle" means any device and attachments supported by one or more wheels which is propelled or drawn by any power other than muscular power over the highways, streets or alleys of this state. The term "motor vehicle" shall not include electric personal assistive mobility devices as defined in Section 63-3-103. However, mobile homes which are detached from any self-propelled vehicles and parked on land in the state are hereby expressly exempt from the motor vehicle ad valorem taxes, but house trailers which are actually in transit and which are not parked for more than an overnight stop are not exempted.

(b) "Public highway" means and include s every way or place of whatever nature, including public roads, streets and alleys of this state generally open to the use of the public or to be opened or reopened to the use of the public for the purpose of vehicular travel, notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance, or repair.

(c) "Administrator of the road and bridge privilege tax law" means the official authorized by law to administer the road and bridge privilege tax law of this state.

SOURCES: Codes, 1942, § 10007-03; Laws, 1958, ch. 588, § 3; Laws, 1960, ch. 413, § 1; Laws, 1968, ch. 587, § 16; Laws, 2003, ch. 485, § 6, eff from and after July 1, 2003.

Cross References — Motor vehicle privilege taxes, see § 27-19-1 et seq.

Mobile home ad valorem taxes, see § 27-53-1 et seq.

JUDICIAL DECISIONS

1. In general.
2. "Motor vehicle."

1. In general.

In deciding that the state in which a nonresident member of the armed forces is living in compliance with military orders is prohibited from collecting ad valorem taxes upon his personal property under the provisions of the Soldiers and Sailors Civil Relief Act of 1940, as amended, it was unnecessary for the court to decide whether the Mississippi supreme court was correct in holding that a house trailer was a "motor vehicle." Snapp v. Neal, 382 U.S. 397, 86 S. Ct. 485, 15 L. Ed. 2d 445 (1966).

The definition of house trailers in Code 1942, § 10007-53 is in pari materia with this section [Code 1942, § 10007-03], which by definition also includes house trailers. Snapp v. Neal, 250 Miss. 597, 164

So. 2d 752 (1964), rev'd on other grounds, 382 U.S. 397, 86 S. Ct. 485, 15 L. Ed. 2d 445 (1966).

2. "Motor vehicle."

With respect to competing claims on the debtor's mobile home, the county's ad valorem tax liens had priority over a secured claim because, under Mississippi law, the mobile home did not qualify as a motor vehicle that would be exempt from Miss. Code Ann. § 27-35-1 given that the definition of motor vehicle at Miss. Code Ann. § 27-51-5 expressly excludes mobile homes, which are separately defined at Miss. Code Ann. § 27-53-1. In re Riley, 550 B.R. 728 (Bankr. N.D. Miss. 2016).

§ 27-51-7. Persons liable for tax; time of payment; due date.

Any person required by law to pay a road and bridge privilege license tax on any motor vehicle shall also be liable for the ad valorem taxes due on such motor vehicle, unless otherwise specifically exempt herein. Such ad valorem taxes due shall be paid at the same time the road and bridge privilege license tax is paid, and the payment of the said ad valorem taxes due shall be a prerequisite to the issuance of the said road and bridge privilege license.

The ad valorem tax lien date for the purpose of this chapter shall also constitute the ad valorem tax due date which shall also be the same date that the subject motor vehicle is purchased from a bona fide dealer, if it is intended that such motor vehicle is to be operated upon the highways of this state.

In all cases, however, where the time for complying with the road and bridge privilege tax law has been extended by law as to time of payment, then the same extension of time shall apply to the date on which the ad valorem taxes on such motor vehicle must be paid. Ad valorem taxes on all motor vehicles, defined in this chapter, shall be calculated as of the first day of the month in which such taxes were due, regardless of any extension of time for payment of such taxes as provided hereinabove.

SOURCES: Codes, 1942, § 10007-04; Laws, 1958, ch. 588, § 4.

Cross References — Date of tax liability for all lands and other taxable property subject to municipal assessment, see § 21-33-1.

Motor vehicle privilege taxes, see § 27-19-1 et seq.

When taxes become lien, see § 27-35-1.

Action to recover tax, penalty and interest, see § 27-35-5.

When and how county taxes levied, see § 27-39-317.

When taxes are due, payable, and collectible generally, see § 27-41-1.

Mobile home ad valorem taxes, see § 27-53-1 et seq.

Gasoline and motor fuel taxes, see § 27-55-1 et seq.

JUDICIAL DECISIONS

1. In general.

Failure of a member of the armed forces residing in Mississippi in compliance with military orders, but whose domicil is elsewhere, to pay the motor vehicle "license, fee, or excise" of his home state entitles Mississippi to exact from him motor vehicle taxes qualifying as "licenses, fees, or excises;" but the collection of ad valorem taxes upon personal property such as a house trailer is prohibited by the Soldiers and Sailors Civil Relief Act of 1940 as amended. Snapp v. Neal, 382 U.S. 397, 86 S. Ct. 485, 15 L. Ed. 2d 445 (1966).

RESEARCH REFERENCES

Lawyers' Edition. State tax or fee imposed for motor carrier's use of highways as violating commerce clause (Article 1, § 8, clause 3) of Federal Constitution — Supreme Court cases. 97 L. Ed. 2d 843.

§ 27-51-9. Taxable and fiscal years; taxes to be collected by county and municipal tax collectors; when to be paid; computation of tax.

For the purposes of this chapter, the fiscal year shall commence on August 1 and shall end on July 31 of each year. The taxable year shall run concurrently with the taxable year in effect in the law pertaining to the payment of the road and bridge privilege license tax on motor vehicles. Except as otherwise provided in Section 27-41-2, ad valorem taxes on motor vehicles shall be collected by the county tax collector for the county and state and by the municipal tax collector for the municipalities. Ad valorem taxes for any ensuing year may be paid during the month as provided in Section 27-19-31, however, and said ad valorem taxes on any motor vehicle must be paid at the same time or prior to the time that the road and bridge privilege license is issued for the subject motor vehicle, unless herein otherwise specifically exempt from such ad valorem taxes. The ad valorem tax on motor vehicles shall be computed on the millage rates in effect at the time such privilege license tax is to be paid.

SOURCES: Codes, 1942, § 10007-05; Laws, 1958, ch. 588, § 5; Laws, 1976, ch. 361, § 18; Laws, 1977, ch. 484, § 11; Laws, 1980, ch. 487; Laws, 1993, ch. 540, § 8; Laws, 1994, ch. 465, § 4, eff from and after passage (approved March 22, 1994).

Editor's Note — Laws of 1993, ch. 540, § 11, effective October 1, 1993, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1994, ch. 465, § 7, effective March 22, 1994, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act before the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Municipal taxes, see § 21-33-1 et seq.

County tax collectors, see § 27-1-1 et seq.

Payment of motor vehicle privilege license tax, see § 27-19-63.

When taxes become lien, see § 27-35-1.

Action to recover tax, penalty and interest, see § 27-35-5.

When and how county taxes levied, see § 27-39-317.

When taxes are due, payable, and collectible generally, see § 27-41-1.

Mobile home ad valorem tax, see § 27-53-11.

Refund of taxes, generally, see § 27-73-1 et seq.

RESEARCH REFERENCES

CJS. 84 C.J.S., Taxation § 122.

§ 27-51-11. Ad valorem tax receipts to be presented before road and bridge privilege license issued; reports; penalties; auditing of tax collectors.

In cases where the road and bridge privilege tax license is issued by the administrator of the road and bridge privilege tax law, before he shall issue such license he shall require that a tax receipt, made out on the prescribed form and properly issued, be presented to him showing that all ad valorem taxes due on such motor vehicle have been paid according to the situs of the subject motor vehicle as shown by the written application for such privilege license. If the application for such privilege license reveals that the situs of the subject motor vehicle is in a municipality, then the administrator of the road and bridge privilege tax law, before issuing the privilege license, shall require that a tax receipt made out on the prescribed form and properly issued be presented to him showing that such ad valorem taxes due have also been paid. The administrator of the road and bridge privilege tax law shall secure a rubber stamp to be used in stamping each such ad valorem tax receipt so presented to him. This stamp shall show the date of issuance and the receipt number of the privilege license issued for each corresponding ad valorem tax receipt, date and license receipt number to be filled in with ink, or with indelible pencil, by and in the name of the administrator of the road and bridge privilege tax law and countersigned by the issuing deputy or clerk. The number of the corresponding ad valorem tax receipt presented shall be written by him on the privilege license receipt. In cases where a separate municipal ad valorem tax receipt for motor vehicles is necessary, the same procedure as outlined herein shall be followed with reference to the municipal tax receipt.

The administrator of the road and bridge privilege tax law, his deputies or clerks violating the provisions of this section shall be liable on their official bonds in double the amount of the ad valorem taxes due on each such motor vehicle.

Twice each fiscal year the administrator of the road and bridge privilege tax law shall prepare and retain a report showing the privilege license receipt number, the corresponding ad valorem tax receipt number or numbers, and the name under which such license receipt was issued, for each such license receipt issued by him. A separate report shall be made for each county involved, and a duplicate copy of such report shall be furnished the respective tax collector of each county involved, and the tax collector of each municipality in the county. One (1) of these reports shall be made on or before May 15 covering all such license receipts issued by him for the then current fiscal year, including those issued through the month of April. Another such report shall be made on or before November 15 covering all such license receipts issued by him for the remaining portion of the immediately prior fiscal year.

The aforesaid reports shall be made available to the State Auditor upon request, and, in auditing the tax collector for the corresponding fiscal year, such tax receipts indicated on these reports shall be reconciled with the corresponding ad valorem tax receipt number in the office of the tax collector.

SOURCES: Codes, 1942, § 10007-06; Laws, 1958, ch. 588, § 6; Laws, 1960, ch. 413, § 2; Laws, 1968, ch. 361, § 46; Laws, 1994, ch. 465, § 5; Laws, 2009, ch. 546, § 9, eff from and after passage (approved Apr. 15, 2009.)

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1994, ch. 465, § 7, effective March 22, 1994, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act before the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Cross References — Issuance of motor vehicle license tags and decals, see §§ 27-19-43, 27-19-59.

Presentation of ad valorem tax receipts with application for motor vehicle license, see § 27-19-61.

RESEARCH REFERENCES

CJS. 84 C.J.S., Taxation § 122.

§ 27-51-13. Copy of tax levy to be furnished to county tax collector; postponement of collections where adoption of tax levy is delayed; notice to be given; owners not to be penalized.

On or before September 10, the clerk of the board of supervisors shall furnish the county tax collector a certified copy of the county tax levy for the ensuing year. This tax levy shall not only show the tax levy for each purpose for which it was levied, but it shall also show the total tax levy for each separate taxing area in the county, including the state ad valorem tax levy.

If for any reason the said county tax levy is not adopted and/or delivered to the county tax collector on or before the 15th day of September, then the said tax collector is hereby authorized to postpone for one (1) month the beginning of the collection of ad valorem taxes and road and bridge privilege taxes on all motor vehicles legally situated in his county and liable for said taxes, and the tax collector shall notify the taxpayers of his county by newspaper publication that the beginning of the collection of said taxes is postponed for one (1) month due to the fact that he has not been furnished with a certified copy of the said tax levy as provided by law. Copies of this said newspaper notice shall be furnished the State Tax Commission and the Mississippi Highway Safety Patrol, and the provisions of said notice shall be controlling in all respects on such agencies and on any other peace officer, and no damages, penalties or interest shall accrue against any owner of such motor vehicles during such postponement period.

If such tax levy is not furnished the tax collector within the said one (1) month, then the same procedure as to postponement shall be followed and the same immunities shall apply from month to month until such tax levy has been furnished the tax collector.

SOURCES: Codes, 1942, § 10007-07; Laws, 1958, ch. 588, § 7; Laws, 1968, ch. 549, § 1; Laws, 2001, ch. 596, § 50, eff from and after July 1, 2001.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — County tax collectors, see § 27-1-1 et seq.

Certification of levy of county taxes, see § 27-39-319.

Mobile home ad valorem tax, see § 27-53-1 et seq.

Highway patrol, see § 45-3-1 et seq.

RESEARCH REFERENCES

ALR. Application of requirement that newspaper be locally published for official notice publication. 85 A.L.R.4th 581.

§ 27-51-15. Determination of assessed value.

Motor vehicles shall be assessed uniformly according to value and such assessed value shall be determined by an assessment schedule which shall be prepared and made of minute record by the state tax commission and shall be certified to the president of the board of supervisors of the various counties of the state, and to the mayor or the presiding officer of the municipal boards of the various municipalities, and municipal separate school districts of the state, in care of the clerk of said respective boards, as the official motor vehicle assessment schedule which shall be used by the proper officials of both respective jurisdictions in assessing motor vehicle ad valorem taxes for the ensuing fiscal year.

SOURCES: Codes, 1942, § 10007-08; Laws, 1958, ch. 588, § 8.

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Constitutional provision for taxing motor vehicles, see Miss. Const. Art. 4, § 112.

Board of supervisors, see § 19-3-7.

Clerk of board of supervisors, see § 19-3-27.

Tax duties of municipal governing authorities and clerk, see § 21-33-27.

Department of Revenue, see § 27-3-1 et seq.

§ 27-51-17. County tax collector to be supplied with tax receipts; form of receipts; use of receipts.

The tax collector of each county shall be supplied with a sufficient number of tax receipts to be used by him in the collection of both the privilege tax and the ad valorem tax on all taxable motor vehicles in his county. The tax receipt for these purposes shall be a combination receipt and shall carry a number which shall be the same number as that of the road and bridge privilege tax receipt and tag number for each such motor vehicle. Under no circumstances shall one tax receipt be used for receipting the ad valorem taxes on more than one motor vehicle.

There shall also be ample provisions made on these tax receipt forms for receipting ad valorem taxes collected for any municipality or municipal separate school district in the county, in case the county tax collector is legally directed as hereinafter provided to collect such taxes at the same time such tax collections are made for the county. This combination tax receipt form shall be prescribed by the tax commission in cooperation with the administrator of the road and bridge privilege tax law, and the administrator of the road and bridge privilege tax law shall supply them.

The county tax collector of each county shall also secure an ample supply of ad valorem tax receipts to be used by him in collecting the ad valorem taxes on all motor vehicles in his county for which the road and bridge privilege tax license will be issued by the administrator of the road and bridge privilege tax law. Ample provisions shall also be made on these forms for receipting any municipal and municipal separate school district ad valorem taxes collected, in case the county tax collector is legally directed to collect such taxes. All such ad valorem tax receipt forms for each county, for the collection of ad valorem taxes only, shall be numbered in consecutive order beginning with the number "one"; they shall be made up in triplicate, the exact form of which shall be prescribed by the state tax commission, and they shall be supplied by the county board of supervisors. A separate receipt shall be issued for each motor vehicle on which ad valorem taxes are paid.

SOURCES: Codes, 1942, § 10007-09; Laws, 1958, ch. 588, § 9; Laws, 1960, ch. 413, § 3, eff from and after its passage (approved April 28, 1960).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — County tax collectors, see § 27-1-1 et seq.

Department of Revenue, see § 27-3-1 et seq.

§ 27-51-19. Assessment schedule to be prepared by Department of Revenue; basis of schedule; corrections.

The Department of Revenue shall, on or before the fifteenth day of June of each year, prepare and adopt an assessment schedule of motor vehicles, as defined in this chapter, which such assessment schedule, and no other, excepting as may be hereinafter provided, shall be used by the tax collector of each county and each municipality in the state, in assessing, calculating and collecting ad valorem taxes in each respective jurisdiction on all motor vehicles liable for such tax as authorized by this chapter.

In preparing the assessment schedule, the Department of Revenue may make use of, as a base, the values of the various makes, models, year of manufacture, and types of motor vehicles as adopted by some reputable nationwide agency or association which regularly compiles and furnishes such information as to actual value of the different motor vehicles as to make, model, type and year of manufacture, or by any other method or methods or combination of methods which in its judgment will tend to equalize the assessed value of property of this class with property of other classes in general. These various motor vehicles, together with any special equipment, may be grouped into as many categories as, in the judgment of the Department of Revenue, will be most practical in effecting equalization.

In preparing the assessment schedule, the Department of Revenue shall apply such a percentage to the base value of such motor vehicles which, in its best judgment, will produce an assessed value which will equalize the assessed value of motor vehicles with the assessed value of other property in general, throughout the state, so far as is practical.

The Department of Revenue shall also make necessary corrections and amendments to this schedule from time to time throughout the fiscal year, and in so doing the general procedure set out above shall be followed.

SOURCES: Codes, 1942, § 10007-10; Laws, 1958, ch. 588, § 10; Laws, 1960, ch. 473, § 1; Laws, 1991, ch. 385, § 5; Laws, 1994, ch. 465, § 6; Laws, 2009, ch. 492, § 83, eff from and after July 1, 2010.

Editor's Note — Laws of 1994, ch. 465, § 7, effective March 22, 1994, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act before the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — County tax collectors, see § 27-1-1 et seq.

Department of revenue generally, see § 27-3-1 et seq.

Mobile home ad valorem tax, see § 27-53-23.

§ 27-51-20. Repealed.

Repealed by Laws, 2006, ch. 535, § 3 effective from and after July 1, 2006.

[Laws, 1993, ch. 604, § 3, eff from and after passage (eff April 19, 1993, without Governor's signature).]

Editor's Note — Former § 27-51-20 provided certain criteria for motor vehicle assessment schedules and an exemption from ad valorem taxes under certain circumstances.

§ 27-51-21. Copy of assessment schedule to be forwarded to board of supervisors and municipal board; notice of inspection of schedule; hearings of petitions for reductions.

On or before the first day of July each year, the tax commission shall forward to the president of the board of supervisors of each county and to the mayor or other presiding officer of the governing board of each municipality, in care of the clerk of the respective boards, a certified copy of the assessment schedule which is designed to become effective for the then ensuing fiscal year in assessing and collecting ad valorem taxes on motor vehicles as defined in this chapter.

At the July meeting of the board of supervisors of the county and the governing board of the municipality, the boards shall examine and consider the motor vehicle assessment schedule and shall adopt an order on their respective minutes that such motor vehicle assessment schedule is ready and open for inspection and examination by any interested taxpayer and that within a period of fifteen (15) days the respective boards shall reconvene in regular or adjourned meeting to hear and take action on any complaint, filed in writing, objecting to and petitioning for a specified reduction on any portion or portions of the assessment schedule affecting the complainant directly. The respective boards shall continue in session from day to day until all such objections and petitions have been heard and action has been taken thereon. The order provided for herein shall refer by name to this chapter, and it shall not be necessary to incorporate in the order the provisions of this chapter.

SOURCES: Codes, 1942, § 10007-11; Laws, 1958, ch. 588, § 11; Laws, 1960, ch. 473, § 2; Laws, 1990, ch. 340, § 1, eff from and after passage (approved March 12, 1990).

Editor's Note — Section 27-3-4 provides that the terms "'Mississippi State Tax Commission,' 'State Tax Commission,' 'Tax Commission' and 'commission' appearing in the laws of this state in connection with the performance of the duties and functions by the Mississippi State Tax Commission, the State Tax Commission or Tax Commission shall mean the Department of Revenue."

Cross References — Regular meetings of board of supervisors, see §§ 19-3-11, 19-3-13.

Meeting of board of supervisors under revenue laws, see § 19-3-17.

Equalization of municipal assessments, see § 21-33-29.

Department of Revenue, see § 27-3-1 et seq.

Filing municipal assessment with municipal board and board's action thereon, see § 27-51-37.

Mobile home ad valorem tax, see § 27-53-23.

§ 27-51-23. Filing and disposition of objections to assessment schedule and claims for adjustment; suits for taxes paid by dissatisfied taxpayers.

Any person objecting to any portion or portions of the motor vehicle assessment schedule affecting him or her directly shall file a written objection and claim for adjustment, in triplicate, with either the board of supervisors of the county or the municipal board of the municipality or with both such boards, on a form to be designed and supplied by the tax commission. The motor vehicle owner shall set forth therein in detail the grounds for his objection and claim for adjustment, with a full and complete identifiable description of the subject motor vehicle.

If the board of supervisors or the municipal board, as the case may be, is of the opinion that the objection and claim for adjustment of the motor vehicle owner has sufficient merit, then the original and duplicate copies of the said objection and claim together with any recommendation made by either of the said governing boards shall be forwarded to the tax commission for approval or disapproval.

If the tax commission is of the opinion that the said objection contains sufficient merit, then the tax commission shall make whatever adjustment on such claim as in its judgment is fair and equitable; if, on the contrary, the tax commission is of the opinion that the said objection to the proposed assessment does not have sufficient merit then the tax commission shall disapprove the claim. In either case, the tax commission shall return the original copy of the objection and petition to the clerk of the board of supervisors or to the clerk of the municipal board, as the case may be, with its action duly stated thereon. The decision of the tax commission in disapproving such a claim shall be final as between the board of supervisors and/or the municipal board and the tax commission, and the clerk of the respective boards shall then notify the claimant that his adjustment claim has been disapproved by the tax commission.

A petition for adjustment originating in either the county or a municipality of the county, if approved by the tax commission, shall become effective, as approved, in both jurisdictions, and in cases where the county tax collector does not collect said taxes for the municipality, then it shall be the duty of the clerk of the jurisdiction in which the claim for adjustment originated to officially notify the tax collector of the other jurisdiction, by citing the minute record of such action and properly identifying the subject motor vehicle.

If the tax commission approves a claim for the reduction of a proposed assessed value of any specific motor vehicle, then upon receipt of such notice by the clerk of the board of supervisors of the county or by the clerk of the municipal board, as the case may be, a minute record shall be made and a certified copy of such action shall be furnished the tax collector, and in making his report, the tax collector shall cite on the ad valorem tax receipt and in his report the minute book and page as legal reason for such reduction in assessed value on any such motor vehicle. Under no circumstances shall a tax collector vary from the said adopted assessment schedule in calculating and collecting motor vehicle ad valorem taxes unless such petition for reduction has been approved by the tax commission, and the tax collector has filed in his custody written official authority therefor from the clerk of the respective board, and evidence of such action is cited as hereinabove provided. An adjustment of the proposed assessed value of one or more motor vehicles of a certain group or class, under this procedure, shall not affect the proposed assessed value of other motor vehicles of the same group or class.

Any taxpayer dissatisfied with any portion of the assessment schedule directly affecting him may pay the resulting tax under protest and sue for recovery of all or any portion of the tax paid, provided that he requests the tax collector to indicate on the tax receipt at the time the tax is paid that the said tax is being paid under protest. This recourse is available, however, only to the taxpayer who filed objection and adjustment claim to the proposed assessment during the time set for filing such objection, as provided hereinabove, excepting in cases where the cause for such protest originated subsequent to the time for filing such protest.

SOURCES: Codes, 1942, § 10007-12; Laws, 1958, ch. 588, § 12.

Cross References — Objections to municipal assessment rolls, see §§ 21-33-33, 21-33-35.

Appeals by taxpayer from municipal assessments, see § 21-33-39.

Tax Commission as meaning the Department of Revenue, see § 27-3-4.

Objections to assessment roll, generally, see §§ 27-35-89, 27-35-93.

Examination of assessment rolls to determine necessity of new assessment, see § 27-35-129.

Mobile home ad valorem tax, see § 27-53-23.

Refunds of taxes generally, see § 27-73-1 et seq.

§ 27-51-25. County tax collector's reports and records of tax collections; remittance of tax collections to municipalities.

Within twenty (20) days after the end of the month, the county tax collector shall file a report showing the amount of motor vehicle ad valorem taxes collected by him for the previous month. This report shall be made in part in conjunction with and as a part of the monthly report made on the collection of road and bridge privilege taxes for the same period. The form for this portion of said report shall be prescribed by the administrator of the road and bridge privilege tax law in cooperation with the state tax commission.

This said report shall show, in addition to the information prescribed by the administrator of the road and bridge privilege tax law, the following information for each motor vehicle on which ad valorem taxes were paid: the code number of the vehicle as fixed by the assessment schedule, the assessed value of the vehicle, the situs of the vehicle as to school district, road district, levee district, municipality, the total tax rate applicable, ad valorem taxes, damages, if any, and the total ad valorem taxes and damages. These sheets shall be numbered in consecutive order, and shall be made in quadruplicate. The original copy of this report shall be placed in a suitable binder and retained by the county tax collector as a permanent record, the first and second copies shall be forwarded to the administrator of the road and bridge privilege tax law and commission of public safety respectively, as now provided by law, and the third copy shall be delivered to the chancery clerk.

When the above mentioned portion of the report has been completed, a recapitulation of it shall be made on a separate sheet, showing by classes the total number of road and bridge privilege licenses issued, the amount of money collected for the license plates, the total road and bridge privilege taxes collected by classes, and the total amount of ad valorem taxes collected designating the amount collected for each separate taxing area. This report shall also be made in quadruplicate. The tax collector shall retain the original as a permanent record, the first copy shall be forwarded to the administrator of the road and bridge privilege tax law, the second copy shall be forwarded to the tax commission, and the third copy shall be delivered to the chancery clerk.

Motor vehicle ad valorem tax collections shall be entered in the tax collector's cash book as reflected by the said recapitulation, showing by taxing area, the total assessed value and total such taxes collected each month for each separate taxing area, and it shall not be necessary that either the tax receipt number or the taxpayer's name be entered, as required by Section 27-41-39, Mississippi Code of 1972, for other ad valorem tax collections.

In all cases where the county tax collector is ordered to collect motor vehicle ad valorem taxes for a municipality, the tax collector shall furnish to each such municipality a certified statement as to the total assessed value of the motor vehicles on which taxes were collected for such municipality, together with an additional statement showing the net amount of taxes collected for such municipality less his indicated collection fees. This report shall be made to the municipality at the same time a remittance is made to the municipality for all such net ad valorem taxes collected for the said municipality for the previous month. This remittance and report shall be made to the municipality on or before the twentieth day of the month following that in which the collections were made.

SOURCES: Codes, 1942, § 10007-13; Laws, 1958, ch. 588, § 13; Laws, 1960, ch. 413, § 4, eff from and after its passage (approved April 28, 1960).

Cross References — Department of Revenue, see § 27-3-1 et seq.

Tax Commission as meaning Department of Revenue, see § 27-3-4.

Motor vehicle privilege taxes, see § 27-19-1 et seq.

Tax collector's duties under road and bridge privilege tax law, see §§ 27-19-99, 27-19-127.

Procedure for collection of tax by county tax collector, see § 27-51-29.

Mobile home ad valorem taxes, see §§ 27-53-17, 27-53-21.

§ 27-51-27. Owner may receive credit for taxes paid when motor vehicle is destroyed; application and proof; perjury.

If any motor vehicle on which the ad valorem taxes prescribed in this chapter have been paid shall be totally destroyed by fire, tornado, flood, collision, accident or acts of Providence, then the owner of such motor vehicle, upon filing a petition and submission of sufficient proof, may be credited with the amount of the ad valorem taxes on the proportional part of the taxable year remaining, less ad valorem taxes accruing on the salvage price, if any, in calculating the amount of ad valorem taxes due on any replacement for such a motor vehicle, if replaced during the then current taxable year. In no event, however, shall such person claiming credit under this provision be entitled to a cash refund.

In order to obtain benefit of this credit, such person must submit proof supported by affidavit of three (3) reputable citizens that such motor vehicle has been totally destroyed and a statement must be made as to the estimated amount of salvage value remaining. The application for this credit and the three (3) supporting affidavits must be notarized by an officer who has legal authority to notarize such instruments.

Any person who makes or swears to a false statement or makes or swears to a statement of facts without personal knowledge of such facts, in any connection with an adjustment claim as referred to above, shall be guilty of perjury and upon conviction shall be punished as now provided by law. The same procedure as outlined above shall apply to municipalities and municipal separate school districts in proper cases, if the subject motor vehicle has been totally destroyed as outlined above.

SOURCES: Codes, 1942, § 10007-14; Laws, 1958, ch. 588, § 14; Laws, 1977, ch. 484, § 12, eff from and after passage (approved April 15, 1977).

Cross References — Exemptions and credits, see § 27-51-41.
Crime of perjury, see § 97-9-59.

RESEARCH REFERENCES

Am Jur. 6 Am. Jur. Proof of Facts 3d, Act of God, § 1 et seq.

§ 27-51-29. Procedure where municipality desires county tax collector to collect motor vehicle ad valorem taxes; fees; inspection of tax collector's records; penalties; liability of tax collector on official bond.

Any municipality in the state desiring to have its motor vehicle ad valorem taxes collected by the county tax collector at the same time and in the same manner provided for by this chapter for collecting county and state ad valorem taxes on motor vehicles may do so by proceeding as follows:

On or before the 1st day of May, the municipal board shall enter an order upon its minutes signifying its desire to have the county tax collector collect its motor vehicle ad valorem taxes at the same time and in the same manner that he collects the county and state ad valorem taxes on such motor vehicles for the ensuing fiscal year. A certified copy of this order shall be furnished the tax collector of the county, the state tax commission, and the administrator of the road and bridge privilege tax laws. In such case, it shall be mandatory that such municipal ad valorem taxes be collected by the county tax collector.

The authorization of the tax collector to collect municipal taxes on this class of property shall also include the collection of such taxes on such property located in the municipal separate school district, if any, although such property is located outside of the corporate limits of such municipality.

On or before September fifteenth, the municipal clerk shall certify to the county tax collector a copy of its official tax levy for the then ensuing fiscal year. On this tax levy, the clerk shall not only certify as to the tax levy for each purpose for which it was levied, but he shall also certify as to the total amount of the levy for all municipal purposes, and he shall show separately the total amount of the levy for the municipal separate school district, if the said municipality is a part of a municipal separate school district.

After collecting such municipal and municipal separate school district ad valorem taxes, the county tax collector shall retain the fee, as allowed in Section 25-7-21, Mississippi Code of 1972, except in no instance shall his fee be less than two percent of such collection for the services furnished by a county office in collecting municipal separate school district taxes. Such fees shall be paid into the county general fund. The tax collector shall, on or before the twentieth day of the following month, remit to the municipality the remaining portion of such taxes so collected for and during the preceding month. A report of the total assessed value of the subject motor vehicle on which such municipal ad valorem taxes were collected for the preceding month shall be forwarded to the municipality along with the said remittance.

The records of the county tax collector shall be available at any time during regular office hours for inspection by the municipal authorities or their authorized agents to determine as to whether or not any such taxpayer has been properly assessed, both as to value and as to situs of the subject motor vehicle, and as to whether or not the proper tax has been collected and remitted for the benefit of the municipality and municipal separate school district, in proper cases, if such municipality has officially authorized said tax collector to collect its motor vehicle ad valorem taxes as provided hereinabove.

For similar violations of this chapter, the same penalties shall apply in favor of any municipality, in proper cases, which apply in favor of the counties. The tax collector shall be liable on his official bond to the municipality for any failure on his part to assess, collect and remit the correct amount of taxes due any municipality under the provisions of this chapter on any motor vehicle for which he collects county and state ad valorem taxes.

SOURCES: Codes, 1942, § 10007-15; Laws, 1958, ch. 588, § 15; Laws, 1960, ch. 413, § 5; Laws, 1968, ch. 549, § 2; Laws, 1968, ch. 361, § 47, eff from and after January 1, 1972.

Cross References — Duties of municipal authorities with respect to assessment rolls, see § 21-33-27.

Assessment of motor vehicles, see § 27-51-33.

Assessment of mobile homes, see §§ 27-53-17 through 27-53-21.

ATTORNEY GENERAL OPINIONS

County tax collectors are entitled to be paid additional compensation for collecting city taxes on motor vehicles if they are collecting such taxes by virtue of written contract or interlocal agreement between county and municipality or municipalities in county and if there is not effective municipal order requiring collection of such taxes by county tax collector as authorized by statute. Shaw, June 23, 1993, A.G. Op. #93-0460.

The county tax collector is not required to collect municipal taxes on mobile homes unless there is a contract between the city and the county. Wilkerson, Mar. 15, 2002, A.G. Op. #02-0079.

§ 27-51-31. Owner liable for motor vehicle ad valorem taxes to make application for privilege license; contents; penalty for misstatements; liability of tax collector on official bond.

Each motor vehicle owner liable for this said ad valorem tax shall each year file with the tax collector a written application for the motor vehicle road and bridge privilege license. In addition to the information required by Section 27-19-59, this application shall also furnish information showing as to what school district, what road district, if any, what levee district, if any, and any information as to other special taxing districts which represent the situs of the subject motor vehicle. The proper road and bridge privilege tax receipt number shall be written on the said applications and they shall be filed in consecutive order in a suitable filing cabinet. This application form shall be prescribed by the tax commission in cooperation with the administrator of the road and bridge privilege tax law, and shall be supplied by the board of supervisors.

These applications shall be preserved by the tax collectors until the board of supervisors shall, by written order, authorize that they may be destroyed. Such authority shall not be issued by the said board of supervisors until a complete audit of the tax collector has been made and all records are found to be in order and all taxes are found to have been properly calculated, collected, and all funds arising therefrom have been properly accounted for and paid into the proper funds as certified to by the auditor of public accounts.

Any material misstatement of facts contained in this privilege license application shall constitute a misdemeanor and upon conviction the offending person shall be punished according to law.

The tax collector shall be liable on his official bond for the amount of any taxes lost by reason of his failure to comply with any of the provisions of this chapter, and it shall be the duty of the state auditor of public accounts to so charge the account of any such tax collector and to enforce payment to the proper authorities of any such funds due and unpaid.

SOURCES: Codes, 1942, § 10007-16; Laws, 1958, ch. 588, § 16; Laws, 1960, ch. 413, § 6, eff from and after its passage (approved April 28, 1960).

Editor's Note — Section 7-7-2, as added by Laws, 1984, chapter 488, § 90, and amended by Laws, 1985, chapter 455, § 14, Laws 1986, chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall be the state fiscal management board, and, more particularly, such words or terms shall mean the state fiscal management board whenever they appear. Thereafter, Laws, 1989, chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer, and, more particularly, such words or terms shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws, 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Cross References — Owner's application for motor vehicle license, see § 27-19-59.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-51-33. Tax assessors not required to assess motor vehicles; value of vehicles part of assessed value of personal property in county and municipality; effectiveness of order directing county tax collector to collect municipal taxes.

Upon enactment of this law, the tax assessors of the various counties and municipalities of the state shall not be required to assess motor vehicles, as defined in this chapter, in preparing their regular assessment rolls from year to year.

The total assessed value of all motor vehicles as reflected by the annual report of the county tax collector shall be considered as a legal part of the assessed value of personal property in the county and the total assessed value of motor vehicles on which taxes were paid during the next preceding fiscal year shall be used in determining the total assessed value of a county for classification purposes, and the total assessed value of all such motor vehicles of the municipality for the same period, as reflected by the annual report of the county tax collector, shall be considered as a legal part of the assessed value of personal property in the municipality in determining the total assessed value of such municipality.

Any order legally adopted and made of minute record by the municipal authorities directing the county tax collector to collect its ad valorem taxes on motor vehicles as provided by this chapter shall remain in force from year to year until rescinded by official order duly recorded and certified to the county tax collector and the municipal assessor. Further, any such order shall comply with the provisions of Section 27-41-2.

For any year, any municipality may adopt an order rescinding its former order authorizing the county tax collector to collect its ad valorem taxes on motor vehicles, provided that such rescinding order is duly adopted, made of minute record, and certified to the county tax collector at least sixty (60) days prior to the beginning of the ensuing fiscal year, and such order shall be published one (1) time in a newspaper having general circulation in the subject municipality.

SOURCES: Codes, 1942, § 10007-17; Laws, 1958, ch. 588, § 17; Laws, 1960, ch. 413, § 7; Laws, 1977, ch. 484, § 13; Laws, 1993, ch. 540, § 9, eff from and after October 1, 1993.

Editor's Note — Laws of 1993, ch. 540, § 11, effective October 1, 1993, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Assessment of personal property generally, see § 27-35-15.

Procedure for collection of tax by county tax collector, see § 27-51-29.

§ 27-51-35. Preparation of assessment schedule where municipality elects not to adopt schedule prepared by state tax commission.

Any municipality in the state electing not to adopt the motor vehicle assessment schedule for the assessment and collection of its ad valorem taxes on motor vehicles, provided for by Section 27-51-19, shall order its tax assessor to prepare and file with the municipal board of such municipality an assessment schedule for such purposes, excepting motor vehicles owned by public utilities and railroads, which, under the authority of Section 27-35-301, Mississippi Code of 1972, are assessed by the state tax commission. The said order shall be made of minute record and a certified copy shall be furnished the municipal tax assessor.

In preparing the assessment schedule, the municipal tax assessor shall comply in general with the provisions of Section 27-51-19, excepting that he shall equalize the assessed value of motor vehicle with the assessed value of other property located within his jurisdiction rather than with the assessed value of property throughout the state.

SOURCES: Codes, 1942, § 10007-18; Laws, 1958, ch. 588, § 18.

Editor's Note — At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in a statutory reference in both paragraphs was corrected by deleting "of the chapter" following "Section 27-51-19."

Cross References — Municipal taxes, see § 21-33-1 et seq.

§ 27-51-37. Duties of municipal tax assessor; proceedings by municipal board.

On or before the first day of July each year, the municipal tax assessor shall file with the municipal clerk a copy of the assessment schedule. The tax assessor shall attach his certificate to the assessment schedule, prior to its delivery to the clerk. This assessor's certificate shall cite the authority under which the assessment schedule was prepared, and it must also contain a statement that in his best judgment the assessed value of motor vehicles shown therein are equalized with the assessed value of other real and personal property in general throughout the subject jurisdiction.

When the said municipal assessment schedule has been filed with the municipal board, then such board shall follow the same procedure for the subject municipality as that provided for by Section 27-51-21 of this chapter with reference to the county board of supervisors.

SOURCES: Codes, 1942, § 10007-19; Laws, 1958, ch. 588, § 19; Laws, 1960, ch. 413, § 8, eff from and after its passage (approved April 28, 1960).

Cross References — Duties of municipal authorities and clerk with respect to assessment rolls generally, see § 21-33-27.

§ 27-51-39. Objections to municipal assessment schedule and claims for adjustment; determination by board; suit for taxes paid by dissatisfied taxpayer.

Any person objecting to any portion or portions of the said motor vehicle assessment schedule affecting him or her directly shall file a written objection and claim for adjustment, in duplicate, with the municipal board. The motor vehicle owner shall set forth therein in detail the grounds for his objection and claim for adjustment, with a full and complete identifiable description of the subject motor vehicle.

If the municipal board is of the opinion that the objection and claim for adjustment of the motor vehicle owner has sufficient merit then it shall make whatever adjustment on such claim as in its judgment is fair and equitable; if, on the contrary, the municipal board is of the opinion that the said objection to the proposed assessment does not have sufficient merit then the said board shall disapprove the claim, and the claimant shall be so notified.

If the municipal board approves a claim for the reduction of a proposed assessed value of any specific motor vehicle, then a minute record of such action shall be made by the clerk of said board and a certified copy of such action shall be furnished the tax collector, and in making his report the tax collector shall cite on the ad valorem tax receipt and in his report the minute book and page as legal reason for such reduction of assessed value on any such motor vehicle. Excepting, as hereinabove provided, the tax collector is without legal authority to vary from the adopted assessment schedule in collecting such taxes on any specific motor vehicle.

Any taxpayer dissatisfied with any portion of the assessment schedule directly affecting him may pay the resulting tax under protest, at time of payment, and sue for recovery of all or any portion of the tax paid. This recourse is available, however, only to the taxpayer who filed objection and adjustment claim to the proposed assessment during the time set for filing such objection, as provided hereinabove, excepting in cases where the cause for such protest originated subsequent to the date for filing such objection.

SOURCES: Codes, 1942, § 10007-20; Laws, 1958, ch. 588, § 20.

Cross References — Objections to municipal assessment rolls, see §§ 21-33-33, 21-33-35.

§ 27-51-41. Exemptions and credits; sale or other disposition of vehicle; penalties.

(1) The exemptions from the provisions of this chapter shall be confined to those persons or property exempted by this chapter or by the provisions of the Constitution of the United States or the State of Mississippi. No exemption as now provided by any other statute shall be valid as against the tax levied by this chapter. Any subsequent exemption from the tax levied hereunder shall be provided by amendment to this section which shall be inserted in the bill at length.

(2) The following shall be exempt from ad valorem taxation:

(a) All motor vehicles, as defined in this chapter, and including motor-propelled farm implements and vehicles, while in the hands of bona fide dealers as merchandise and which are not being operated upon the highways of this state.

(b) All motor vehicles belonging to the federal government or the State of Mississippi or any agencies or instrumentalities thereof.

(c) All motor vehicles owned by any school district in the state.

(d) All motor vehicles owned by any fire protection district incorporated in accordance with Sections 19-5-151 through 19-5-207 or by any fire protection grading district incorporated in accordance with Sections 19-5-215 through 19-5-241.

(e) All motor vehicles owned by units of the Mississippi National Guard.

(f) All motor vehicles which are exempted from highway privilege taxes under Section 27-19-1 et seq.

(g) All motor vehicles operated in this state as common and contract carriers of property, private commercial carriers of property, private carriers of property and buses, all of which have a gross weight in excess of ten thousand (10,000) pounds.

(h) Antique automobiles as defined in Section 27-19-47, and antique pickup trucks as provided for under Section 27-19-47.2, Mississippi Code of 1972.

(i) Street rods as defined in Section 27-19-56.6.

(j) One (1) motor vehicle owned by a disabled American veteran, or by the spouse of a deceased disabled American veteran, who is entitled to purchase a distinctive license plate or tag in accordance with Section 27-19-53, regardless of the license plate or tag issued to the disabled American veteran or the veteran's spouse if the disabled American veteran is deceased.

(k) One (1) motor vehicle owned by the unremarried surviving spouse of a member of the Armed Forces of the United States who, while on active duty, is killed or dies and one (1) motor vehicle owned by the unremarried surviving spouse of a member of a reserve component of the Armed Forces of the United States or of the National Guard who, while on active duty for training, is killed or dies.

(*l*) Motor vehicles owned by recipients of the Congressional Medal of Honor or by former prisoners of war, or by spouses of such deceased persons, in accordance with Section 27-19-54.

(m)(i) One (1) private carrier of passengers, as defined in Section 27-19-3, owned by any religious society, ecclesiastical body or any congregation thereof which is used exclusively for such society and not for profit.

(ii) All motor vehicles owned by any such religious society or any educational institution having a seating capacity greater than seven (7) passengers and used exclusively for transporting passengers for religious or educational purposes and not for profit.

(n) All motor vehicles primarily used as rentals under rental agreements with a term of not more than thirty (30) continuous days each and under the control of persons who are engaged in the business of renting such motor vehicles and who are subject to the tax under Section 27-65-231.

(o) Antique motorcycles as defined in Section 27-19-47.1.

(p) One (1) motor vehicle owned by a recipient of the Purple Heart, and one (1) motor vehicle owned by the unremarried surviving spouse of a recipient of the Purple Heart, as provided in Section 27-19-56.5.

(q) Motor vehicles that are eligible to display an authentic historical license plate as provided for in Section 27-19-56.11.

(r) Motor vehicles that are (i) designed or adapted to be used exclusively in the preparation and loading of chemicals or other material for aerial agricultural application to crops; and (ii) only incidentally used on public roadways in this state.

(s) One (1) motor vehicle owned by the mother of a service member who was killed in action or died in a combat zone after September 11, 2001, while serving in the Armed Forces of the United States as provided for in Section 27-19-56.162.

(t) One (1) motor vehicle owned by the unremarried spouse of a service member who was killed in action or died in a combat zone after September 11, 2001, while serving in the Armed Forces of the United States as provided for in Section 27-19-56.162.

(u) Buses and other motor vehicles that are (a) owned and operated by an entity that has entered into a contract with a school board under Section 37-41-31 for the purpose of transporting students to and from schools and (b) used by the entity for such transportation purposes. This paragraph (u) shall apply to contracts entered into or renewed on or after July 1, 2010.

(v) One (1) motor vehicle owned by a recipient of the Silver Star, and one (1) motor vehicle owned by the unremarried surviving spouse of a recipient of the Silver Star, as provided in Section 27-19-56.284.

(w) One (1) motor vehicle owned by a person who is a law enforcement officer and who (i) was wounded or otherwise received intentional or accidental bodily injury, regardless of whether occurring before or after July 1, 2014, while engaged in the performance of his official duties, provided the wound or injury was not self-inflicted, (ii) was required to receive medical treatment for the wound or injury due to the nature and extent of the wound or injury, and (iii) is eligible to receive a special license plate or tag under Section 27-19-56 as a result of such wound or injury, regardless of whether the person obtains such a plate or tag. Application for the exemption provided in this paragraph (w) may be made at the time of initial registration of a vehicle and renewal of registration. In addition, an applicant for the exemption must provide official written documentation that (i) the applicant is a law enforcement officer who was wounded or otherwise received intentional or accidental bodily injury while engaged in the performance of his official duties and that the wound or injury was not self-inflicted along with official written documentation verifying receipt of medical treatment for the wound or injury and the nature and extent of the wound or injury, and (ii) the applicant is eligible to receive a special license plate or tag under Section 27-19-56 as a result of such wound or injury, regardless of whether the person obtains such a plate or tag.

(x) One (1) motor vehicle owned by an honorably discharged veteran of the Armed Forces of the United States who served during World War II, and one (1) motor vehicle owned by the unremarried surviving spouse of such veteran, as provided in Section 27-19-56.438.

(3) Any claim for tax exemption by authority of the above-mentioned code sections or by any other legal authority shall be set out in the application for the road and bridge privilege license, and the specific legal authority for such tax exemption claim shall be cited in said application, and such authority cited shall be shown by the tax collector on the tax receipt as his authority for not collecting such ad valorem taxes, and the tax collector shall carry forward such information in his tax collection reports.

(4) Any motor vehicle driven over the highways of this state to the extent that the owner of such motor vehicle is required to purchase a road and bridge privilege license in this state, yet the legal situs of such motor vehicle is located in another state, shall be exempt from ad valorem taxes authorized by this chapter.

(5) If a taxpayer shall sell, trade or otherwise dispose of a vehicle on which the ad valorem and road and bridge privilege taxes have been paid in any county in the state, he shall remove the license plate from the vehicle. Such license plate must be surrendered to the issuing authority with the corresponding tax receipt, if required, and credit shall be allowed for the taxes paid for the remaining tax year on like privilege or ad valorem taxes due on another vehicle owned by the seller or transferor or by the seller's or transferor's spouse or dependent child. If the seller or transferor does not elect to receive such credit at the time the license plate is surrendered, the issuing authority shall issue a certificate of credit to the seller or transferor, or to the seller's or transferor's

spouse or dependent child, or to any other person, business or corporation, at the direction of the seller or transferor, for the remaining unexpired taxes prorated from the first day of the month following the month in which the license plate is surrendered. The total of such credit may be used by the person or entity to whom the certificate of credit is issued, regardless of the relative amounts attributed to privilege taxes or to county, school or municipal ad valorem taxes. Any credit allowed for taxes due or any certificate of credit issued may be applied to like taxes owed in any county by the person to whom the credit is allowed or by the person possessing the certificate of credit. No credit, however, shall be allowed on the charge made for the license plate. Such license plates surrendered to the tax collector shall be retained by him, and in no event shall such license plate be attached to any vehicle after being surrendered to the tax collector, nor shall any license plate be transferred from one (1) vehicle to any other vehicle.

(6) If the person owning a vehicle subject to taxation under the provisions of this chapter does not operate such vehicle on the highways of this state from the date of acquisition or, if previously registered, from the end of the anniversary month of the tag and decals to the date on which he makes application for a current license tag or decals, he shall pay such ad valorem tax for a period of twelve (12) months beginning with the first day of the month in which he applies for a current license tag or decals under Chapter 19, Title 27, Mississippi Code of 1972. The owner shall submit an affidavit with an application attesting to the fact that the vehicle was not operated on the highways of this state from the date of acquisition or, if previously registered, from the end of the anniversary month of the tag and decals to the date on which he makes application for the current license tag or decals.

(7) Any person found violating any of the provisions of this section shall be arrested and tried, and if found guilty shall be fined in an amount double the total amount of taxes involved.

SOURCES: Codes, 1942, § 10007-21; Laws, 1958, ch. 588, § 21; Laws, 1978, ch. 514, § 1; Laws, 1979, ch. 349, § 2; Laws, 1981, 1st Ex Sess, ch. 6; Laws, 1982, ch. 427 § 15; Laws, 1984, ch. 508, § 11; Laws, 1985, ch. 393, § 2; Laws, 1990, ch. 494, § 4; Laws, 1991, ch. 510, § 2; Laws, 1992, ch. 497, § 17; Laws, 1992, ch. 501, § 10; Laws, 1993, ch. 583, § 2; Laws, 1994, ch. 465, § 2; Laws, 1994, ch. 563, § 6; Laws, 1994, ch. 512, § 3; Laws, 1995, ch. 482, § 2; Laws, 1997, ch. 377, § 15; Laws, 1997, ch. 552, § 2; Laws, 1999, ch. 476, § 4; Laws, 2000, ch. 536, § 27; Laws, 2001, ch. 596, § 51; Laws, 2003, ch. 433, § 2; Laws, 2003, ch. 529, § 34; Laws, 2008, ch. 515, § 2; Laws, 2010, ch. 502, § 1; Laws, 2011, ch. 523, § 54; Laws, 2013, ch. 560, § 51; Laws, 2014, ch. 483, § 39; Laws, 2016, ch. 478, § 34, eff from and after July 1, 2016.

Joint Legislative Committee Note — Section 15 of ch. 377, Laws of 1997, effective July 1, 1997 (approved March 18, 1997) amended this section. Section 2 of ch. 552, Laws of 1997, effective July 1, 1997 (approved April 22, 1997) also amended this section. As set out above, this section reflects the language of Section 2 of ch. 552, Laws, 1997, pursuant to Section 1-3-79 which provides that whenever the same section of law is amended by different bills during the same legislative session, and the effective dates of the amendments are the same, the amendment with the latest approval date shall supersede all other amendments to the same section approved on an earlier date.

Section 2 of ch. 433, Laws of 2003, effective July 1, 2003, amended this section. Section 34 of ch. 529, Laws of 2003, effective July 1, 2003, also amended this section. As set out above, this section reflects the language of both amendments pursuant to Section 1-1-109 which gives the Joint Legislative Committee on Compilation, Revision and Publication of Legislation authority to integrate amendments so that all versions of the same code section enacted within the same legislative session may become effective. The Joint Committee on Compilation, Revision and Publication of Legislation ratified the integration of these amendments as consistent with the legislative intent at the June 3, 2003, meeting of the Committee.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in (2)(r), as added by Laws of 2003, ch. 433, § 2. Clauses (a) and (b) were changed to clauses (i) and (ii), respectively. The Joint Committee ratified the correction at its June 3, 2003, meeting.

Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in Section 34 of Chapter 478, Laws of 2016, which added subsection (2)(x) to this section, by substituting "Section 33 of this act" for "Section 1 of this act." Section 33 of Chapter 478, Laws of 2016, has been codified as Section 27-19-56.438. The Joint Committee ratified the correction at its August 5, 2016, meeting.

Editor's Note — Laws of 1982, ch. 427, § 18, provides as follows:

"SECTION 18. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the highway privilege tax laws, being Section 27-19-1 et seq., prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the highway privilege tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1984, ch. 508, § 12, provides as follows:

"SECTION 12. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the highway privilege tax laws; being Section 27-19-1 et seq., Mississippi Code of 1972, and the Motor Vehicle Ad Valorem Tax Law of 1958, prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of said laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1990, ch. 494, § 5, provides as follows:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the highway privilege tax laws, being Section 27-19-1 et seq., Mississippi Code of 1972, and the Motor Vehicle Ad Valorem Tax Law of 1958, before the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1991, ch. 510, § 4, provides as follows:

"SECTION 4. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which Section 2 of this act [§ 27-51-41] becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which Section 2 of this act [§ 27-51-41] becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which Section 2 of this act [§ 27-51-41] becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1992, ch. 501, § 11, effective from and after October 1, 1992, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the highway privilege tax laws or the motor vehicle ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the highway privilege tax laws and the motor vehicle ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1993, ch. 583, § 3, effective October 1, 1993, provides as follows:

"SECTION 3. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the motor vehicle ad valorem and road and bridge privilege tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the motor vehicle ad valorem and road and bridge privilege tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1994, ch. 465, § 7, eff March 22, 1994, provides as follows:

"SECTION 7. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the tax laws amended by this act before the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of such tax laws as amended by this act are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and execution of any warrant under such laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

Laws of 1994, ch. 563, § 9, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1999, ch. 476, § 5, provides:

"SECTION 5. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the highway privilege tax laws or the Motor Vehicle Ad Valorem Tax Law of 1958 before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the highway privilege tax laws or the Motor Vehicle Ad Valorem Tax Law of 1958 are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Amendment Notes — The 2016 amendment added (2)(x).

Cross References — Exemption of disabled veterans, see § 27-19-53.

Effect of replacement of vehicles under motor vehicle privilege tax law, see § 27-19-71.

Credit for taxes paid where motor vehicle destroyed, see § 27-51-27.

JUDICIAL DECISIONS

1. In general.

A member of the armed forces, residing in Mississippi in compliance with military orders but whose domicil is in another state, is exempt, under the provisions of the Soldiers and Sailors Civil Relief Act of 1940, as amended, from the payment in Mississippi of ad valorem taxes upon personal property, including a house trailer owned and occupied by him in Mississippi. Snapp v. Neal, 382 U.S. 397, 86 S. Ct. 485, 15 L. Ed. 2d 445 (1966).

ATTORNEY GENERAL OPINIONS

A taxpayer is not limited as to number of times he may surrender his license plate and receive credit on a subsequent license plate. Ops Atty Gen, 1961-63, p 72.

Motor vehicles that are exempt from ad valorem taxes pursuant to should not be assessed ad valorem taxes from and after October 1, 1992; any ad valorem tax on such vehicles that accrued prior to October 1, 1992 would be due and owing and those vehicles would be counted toward prior fiscal year total assessed value. Brumfield, Oct. 22, 1992, A.G. Op. #92-0762.

RESEARCH REFERENCES

CJS. 84 C.J.S., Taxation §§ 291, 292.

§ 27-51-41.1. Exemption of percentage of true value of motorcycles, motor homes and trailers.

(1) As used in this section:

(a) "Motorcycle" shall have the meaning ascribed to such term in Section 27-19-3.

(b) "Motor home" means an individually owned private carrier of passengers as defined in Section 27-19-3 whose primary purpose is to provide transportation and human living facilities, including, at a minimum, sleeping facilities, bath and toilet facilities and food storage and preparation facilities.

(c) "Trailer" shall have the meaning ascribed to such term in Section 27-19-3. The term "trailer" shall not include semitrailers as defined in Section 27-19-3, other than those that are used for recreational purposes.

(2)(a) From and after July 1, 2006, through September 30, 2007, sixty percent (60%) of the true value of all motorcycles, motor homes and trailers upon which the owner is required to pay the annual highway privilege tax levied in Chapter 19, Title 27, Mississippi Code of 1972, shall be exempt from ad valorem taxation.

(b) From and after October 1, 2007, through September 30, 2008, fifty-five percent (55%) of the true value of all motorcycles, motor homes and trailers upon which the owner is required to pay the annual highway privilege tax levied in Chapter 19, Title 27, Mississippi Code of 1972, shall be exempt from ad valorem taxation.

(c) From and after October 1, 2008, fifty percent (50%) of the true value of all motorcycles, motor homes and trailers upon which the owner is required to pay the annual highway privilege tax levied in Chapter 19, Title 27, Mississippi Code of 1972, shall be exempt from ad valorem taxation.

SOURCES: Laws, 2006, ch. 535, § 1; Laws, 2007, ch. 533, § 1, eff from and after passage (approved Apr. 18, 2007.)

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in a statutory reference in (1)(b). The reference to "Section 27-9-3" was changed to "Section 27-19-3." The Joint Committee ratified the correction at its August 5, 2008, meeting.

Editor's Note — Laws of 2007, ch. 533, § 6 provides as follows:

"SECTION 6. Section 5 of this act shall take effect and be in force from and after October 1, 2007. The remainder of this act shall take effect and be in force from and after its passage."

§ 27-51-42.2. Exemption for active service volunteer fire fighters.

The board of supervisors of any county is authorized to grant an exemption from motor vehicle ad valorem taxes in the amount of One Hundred Dollars ($100.00) or the amount of ad valorem taxes due, whichever is the lesser amount, on one (1) motor vehicle owned by each resident of the county who is in active service as a volunteer fire fighter for any municipality, county or fire district in the state. To receive the tax exemption, such person must make application, under oath, with the county fire coordinator on a form prepared by the State Tax Commission, and present evidence that he or she is actively serving as a volunteer fire fighter and has continuously served in such capacity for at least three (3) consecutive years before making application for the tax credit under this section. The county fire coordinator shall review all such applications and shall certify to the county tax collector each person whom he determines to qualify for the tax credit. The State Fire Marshal shall promulgate rules and regulations to assist county fire coordinators in defining and prescribing those persons who may qualify for the tax credit under this section as active service volunteer fire fighters.

SOURCES: Laws, 2006, ch. 535, § 2, eff from and after July 1, 2006.

Cross References — State Tax Commission as meaning the Department of Revenue, see § 27-3-4.

ATTORNEY GENERAL OPINIONS

The exemption provided in Section 27-51-42.2 does not extend to taxes levied for school district purposes or for community college purposes. Phillips, Oct. 6, 2006, A.G. Op. 06-0487.

§ 27-51-42.3. Repealed.

Repealed by its own terms effective September 30, 2015.

§ 27-51.42.3. [Laws, 2007, ch. 533, § 5; Laws, 2009, ch. 548, § 25; Laws, 2012, ch. 484, § 1, eff from and after July 1, 2012.]

Editor's Note — Former § 27-51-42.3 pertained to exemptions from motor vehicle ad valorem taxes levied by counties or municipalities for certain active duty members of the Mississippi National Guard, the Armed Forces of the United States or any armed forces reserve component.

§ 27-51-43. Highway safety patrol and other peace officers to check for violations of law; arrest and fines; penalty for unauthorized delay in payment of taxes.

It shall be the duty of members of the Mississippi Highway Safety Patrol, municipal law enforcement officers or any other peace officer, when investigating any traffic violation, wreck or routine check involving any motor vehicle, to obtain all information necessary in determining whether or not the provisions of this chapter have been complied with in all substantial respect with reference to such motor vehicles so involved. It shall also be the duty of all peace officers, including municipal law enforcement officers and members of the said highway safety patrol, to investigate any alleged violation of this chapter reported to them and to proceed according to law.

On and after May 2, 1958, any person operating a motor vehicle upon the public highways of this state who has not complied with the provisions of this chapter shall be arrested by any officer authorized to make arrests, and tried, and, if convicted, shall be guilty of a misdemeanor for each separate offense and shall be fined as now provided by law, and each such illegal operation of a motor vehicle upon the public highways of this state shall constitute a separate offense.

Penalties shall be assessed on the ad valorem taxes due at the rate of five percent (5%) for the first fifteen (15) days of delinquency, or part thereof, and five percent (5%) for each additional thirty-day period of delinquency, or part thereof, not to exceed a maximum penalty of twenty-five percent (25%).

Provided, however, the commission, for good reason shown, may waive all or any part of the penalties imposed. The penalty shall be collected by the tax collector and deposited in the county general fund upon receipt.

SOURCES: Codes, 1942, § 10007-22; Laws, 1958, ch. 588, § 22; Laws, 1959, Ex. ch. 23; Laws, 1968, ch. 361, § 48; Laws, 1977, ch. 484, § 14; Laws, 1982, ch. 427, § 16; Laws, 2005, 5th Ex Sess, ch. 21, § 2, eff from and after passage (approved Oct. 24, 2005.)

Editor's Note — Laws of 1982, ch. 427, § 18, provides as follows:

"SECTION 18. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the highway privilege tax laws, being Section 27-19-1 et seq., prior to the date on which this act becomes effective, whether such assessments, appeals, suits, claims or actions shall have been begun before the date on which this act becomes effective or shall thereafter be begun; and the provisions of the highway privilege tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and executing of any warrant under said laws prior to the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply therewith."

At the direction of the co-counsel for the Joint Legislative Committee on Compilation, Revision and Publication of Legislation, an error in the second paragraph was corrected by substituting "May 2, 1958" for "the effective date of this chapter."

Cross References — Certain taxpayers assessed penalty pursuant to this section not eligible for motor vehicle ad valorem tax credit, see § 27-51-103.

Powers and duties of highway patrol, see § 45-3-21.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor violation, see § 99-19-73.

§ 27-51-45. Commissioner of Revenue may postpone time for preparing assessment schedule.

For any year, the Commissioner of Revenue is hereby authorized, in his discretion, to postpone for not more than thirty (30) days the time for preparation of the assessment schedule herein referred to, the time for forwarding the schedule to the presidents of the various boards of supervisors and mayors or other presiding officers of the various municipalities, the time for the consideration of the schedule and the subsequent time for adoption and publication by these respective boards, and the time for filing objection to the schedule by any affected motor vehicle owner. In cases where any municipality elects to prepare its own independent schedule, such postponement shall also apply to its acts and duties.

Notice of such postponement shall be made by the Commissioner of Revenue of the Department of Revenue and a certified copy shall be furnished the presiding officers of the various counties and municipalities and such postponement shall be binding on all counties and municipalities.

SOURCES: Codes, 1942, § 10007-24; Laws, 1958, ch. 588, § 24; Laws, 1960, ch. 413, § 9; Laws, 2009, ch. 492, § 84, eff from and after July 1, 2010.

Editor's Note — Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

Commissioner of revenue of the department of revenue, see § 27-3-3, 27-3-4.

§ 27-51-47. Rules and regulations.

The state tax commission shall adopt and issue rules and regulations, not inconsistent with this chapter, as to the duties of all officials, boards and officers in the administration of this law, and such other rules and regulations not inconsistent with this chapter, as the tax commission shall deem necessary. Such rules and regulations shall be observed by such officials, boards and officers in all respects and in the performance of any and all duties imposed and powers granted by this chapter.

SOURCES: Codes, 1942, § 10007-25; Laws, 1958, ch. 588, § 25.

Cross References — State tax commission as meaning Department of Revenue, see § 27-3-4.

§ 27-51-49. Motor vehicle ad valorem taxes not provided for in chapter.

No ad valorem taxes on motor vehicles, as defined in this chapter, excepting that provided for by this chapter, shall be assessed, levied or collected.

SOURCES: Codes, 1942, § 10007-26; Laws, 1958, ch. 588, § 26; Laws, 1960, ch. 413, § 10, eff from and after its passage (approved April 28, 1960).

Cross References — Action to recover tax, penalty and interest, see § 27-35-5.

MOTOR VEHICLE AD VALOREM TAX CREDIT

SEC.
27-51-101. Definitions.
27-51-103. Tax credit; amount allowed against ad valorem taxes.

27-51-105. Creation of Motor Vehicle Ad Valorem Tax Reduction Fund; composition and administration of fund.
27-51-107. Purpose of fund; distributions from fund; use of funds distributed.

§ 27-51-101. Definitions.

As used in Sections 27-51-101 through 27-51-107, unless the context requires otherwise:

(a) "Private carrier of passengers" shall have the meaning ascribed to such term in Section 27-19-3, but shall not be construed to include motorcycles.

(b) "Light carrier of property" means any motor vehicle with a gross weight, as defined in Section 27-19-3, of ten thousand (10,000) pounds or less that is designed and constructed for the primary purpose of transporting property on the roads and highways.

(c) "Local taxing district" means any county, municipality, school district or other local entity that levies an ad valorem tax or for which an ad valorem tax is levied, to fund all or a portion of its budget.

(d) "State fiscal year" means the period beginning on July 1 and ending on June 30 of the following year.

(e) "Commission," "State Tax Commission" or "department" means the Department of Revenue.

SOURCES: Laws, 1994, ch. 563, § 1; Laws, 2009, ch. 492, § 85, eff from and after July 1, 2010.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected an error in this section by deleting the subsection (1) designation from the first paragraph. The section was enacted with a subsection designated (1) but no subsection designated (2). The Joint Committee ratified the correction at the August 15, 2017, meeting of the Committee.

Editor's Note — Laws of 1994, ch. 563, § 9, eff from and after July 1, 1994, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 492, § 144 provides:

"SECTION 144. Nothing in this act shall affect or defeat any assessment, refund claim, request for waiver of a tax penalty, the suspension, revocation, surrender, seizure or denial of permit, tag or title, the suspension, revocation or denial of a permit, approved manager status, qualified resort area or forfeiture under the Local Option Alcoholic Beverage Control Law, Section 67-1-1 et seq., the administrative appeal or judicial appeal of any of the foregoing acts or any other action taken by the Mississippi State Tax Commission or by the Chairman of the Mississippi State Tax Commission prior to the effective date of this act. The provisions of the laws relating to the administrative appeal or judicial review of such actions which were in effect prior to the effective date of this act are expressly continued in full force, effect and operation for the purpose of providing an administrative appeal and/or judicial review, where previously provided, of such actions, except to the extent that any matter is pending on an administrative appeal before the three (3) member Mississippi State Tax Commission on the effective date will after the effective date of this act be heard and decided by the Board of Tax Appeals as the successor of the Mississippi State Tax Commission in regard to administrative appeals."

Cross References — Department of revenue generally, see § 27-3-1 et seq.

Retail sales of private carriers of passengers and light carriers of property, as defined in this section, shall be taxed an additional two percent (2%), see § 27-65-17.

§ 27-51-103. Tax credit; amount allowed against ad valorem taxes.

(1) From and after January 1, 1995, through June 30, 1995, a taxpayer shall be allowed as a credit towards the tax liability imposed by Chapter 51, Title 27, Mississippi Code of 1972, on the amount of ad valorem taxes due during the taxable year on any private carrier of passengers and light carrier of property owned by him, an amount equal to five percent (5%) of the assessed value of the motor vehicle.

(2) From and after July 1, 1995, a taxpayer shall be allowed as a credit against motor vehicle ad valorem taxes due under Chapter 51, Title 27, Mississippi Code of 1972, on any private carrier of passengers and light carrier of property owned by him, an amount as provided for in subsection (3) of this section.

(3)(a) Except as otherwise provided in paragraph (b) of this subsection, from and after July 1, 1995, the amount of the credit that a taxpayer shall be allowed against motor vehicle ad valorem taxes due under Chapter 51, Title 27, Mississippi Code of 1972, shall be determined by the State Tax Commission for each fiscal year. The amount of the credit shall be promulgated by the commission on or before May 1 prior to each state fiscal year beginning with the state fiscal year beginning on July 1, 1995. In developing the credit, the commission shall establish credit amounts that provide for an equal percentage of dollar credit amounts for private carriers of passengers and light carriers of property in proportion to their assessed value, based on the projected amount of funds in the Motor Vehicle Ad Valorem Tax Reduction Fund that will be available for distribution in such state fiscal year. The commission may calculate the credit in such a manner so as to have surplus funds available in the Motor Vehicle Ad Valorem Tax Reduction Fund for cash flow needs and monthly shortfalls that might be incurred as a result of unexpected revenue fluctuations; however, in the calculation of the credit in order to make such surplus funds available, the commission shall attempt to create a balance in the Motor Vehicle Ad Valorem Tax Reduction Fund that does not exceed at the end of any state fiscal year five percent (5%) of the projected amount of funds that will be available in the Motor Vehicle Ad Valorem Tax Reduction Fund for distribution during such state fiscal year.

(b) From and after July 1, 2009, through June 30, 2010, a taxpayer shall be allowed as a credit towards the tax liability imposed by Chapter 51, Title 27, Mississippi Code of 1972, on the amount of ad valorem taxes due during the taxable year on any private carrier of passengers and light carrier of property owned by him, an amount equal to four and twenty-five one-hundredths percent (4.25%) of the assessed value of the motor vehicle.

(4) Tax credits provided for by this section may be used against motor vehicle ad valorem taxes due under Chapter 51, Title 27, Mississippi Code of 1972, at the time that a taxpayer pays motor vehicle ad valorem taxes to the county tax collector.

(5) Each receipt for motor vehicle ad valorem taxes shall clearly indicate that the credit provided for by this section is granted as a result of legislative action.

(6) A taxpayer who is delinquent in the payment of motor vehicle ad valorem taxes to the extent that the penalty assessed pursuant to Section 27-51-43, Mississippi Code of 1972, has reached twenty-five percent (25%) of the ad valorem taxes due shall not be eligible to receive the tax credit authorized pursuant to this section.

SOURCES: Laws, 1994, ch. 563, § 2; Laws, 2009, ch. 562, § 3, eff from and after July 1, 2009.

Editor's Note — Laws of 1994, ch. 563, § 9, eff from and after July 1, 1994, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2009, ch. 562, § 6, as amended by Laws of 2009, 2nd Ex Sess, ch. 89, § 1, provides as follows:

"SECTION 6. Sections 1 and 2 of this act shall take effect and be in force from and after May 15, 2009. Sections 3, 4 and 5 of this act shall take effect and be in force from and after July 1, 2009, if a bill appropriating not less than $27,000,000.00 for fiscal year 2010 to the Motor Vehicle Ad Valorem Tax Reduction Fund is enacted into law."

Section 21 of Senate Bill No. 2045, Laws of 2009, 2nd Ex Sess, effective July 1, 2009, transferred $27,000,000.00 of the amount appropriated to the Tax Commission to the Motor Vehicle Ad Valorem Tax Reduction Fund, meeting the condition in the effective date of Section 6 of ch. 562, Laws of 2009.

Cross References — Creation of Motor Vehicle Ad Valorem Tax Reduction Fund, see § 27-51-105.

ATTORNEY GENERAL OPINIONS

The State Tax Commission has statutory authority to reduce the amount of the payments to the county tax collectors by what they perceive to be a loss to the Ad Valorem Tax Reduction Fund when a taxpayer turns in a tag (upon which the

Legislative Tag Credit was received) for credit upon the tag for another vehicle (upon which the legislative credit will also be given). Younger, August 23, 1995, A.G. Op. #95-0523.

§ 27-51-105. Creation of Motor Vehicle Ad Valorem Tax Reduction Fund; composition and administration of fund.

(1) There is created in the State Treasury a special fund to be known as the Motor Vehicle Ad Valorem Tax Reduction Fund, into which shall be deposited the monies specified in Section 27-65-75(10), (11) and (12), such monies as may be required to be transferred into such fund pursuant to Section 27-38-5, and such other monies as the Legislature may provide by appropriation. The monies in the fund shall be used for the purpose of making payments to counties for the reduction in motor vehicle ad valorem tax revenues incurred by local taxing districts in the county as a result of the ad valorem tax credit for private carriers of passengers and light carriers of property that is provided for by Section 27-51-103.

(2) The Motor Vehicle Ad Valorem Tax Reduction Fund shall be administered by the State Tax Commission, and monies in the fund shall be expended upon appropriation by the Legislature. Unexpended amounts remaining in the fund at the end of the state fiscal year shall not lapse into the State General Fund, and any interest earned on amounts in the fund shall be deposited to the credit of the fund.

SOURCES: Laws, 1994, ch. 563, § 3; Laws, 2000, ch. 303, § 10, eff from and after July 1, 2000.

Editor's Note — Laws of 1994, ch. 563, § 9, eff from and after July 1, 1994, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 2000, ch. 303, § 11, provides:

"SECTION 11. If any material provision of this act is declared to be void, or if for any reason is declared to be invalid or of no effect, the remaining provisions of this act shall be void and of no effect."

Laws of 2000, ch. 303, § 12, provides:

"SECTION 12. Section 6 of this act shall be effective with respect to taxable services reflected on bills submitted by telecommunications service providers to their customers which are dated on or after July 1, 2000, regardless of when such services are provided. Section 9 of this act shall take effect and be in force from and after January 1, 2001. The remaining provisions of this act shall take effect and be in force from and after July 1, 2000."

Section 27-3-4 provides that the term "State Tax Commission" shall mean the Department of Revenue.

Laws of 2013, ch. 301, § 1, provides:

"SECTION 1. During fiscal year 2013, the State Fiscal Officer shall transfer the sum of Fifty-two Million Dollars ($52,000,000.00) from the Motor Vehicle Ad Valorem Tax Reduction Fund created in Section 27-51-105 (Fund No. 3769) to the Budget Contingency Fund."

Cross References — State Tax Commission as meaning the Department of Revenue, see § 27-3-4.

Revenues imposed and levied as a result of section 27-65-17 to be disbursed to the Motor Vehicle Ad Valorem Tax Reduction Fund, see § 27-65-35.

Sales tax revenue collected under the provisions of § 27-65-201 to be deposited into the Motor Vehicle Ad Valorem Tax Reduction Fund established in this section, see § 27-65-75.

ATTORNEY GENERAL OPINIONS

The State Tax Commission has statutory authority to reduce the amount of the payments to the county tax collectors by what they perceive to be a loss to the Ad Valorem Tax Reduction Fund when a taxpayer turns in a tag (upon which the Legislative Tag Credit was received) for credit upon the tag for another vehicle (upon which the legislative credit will also be given). Younger, August 23, 1995, A.G. Op. #95-0523.

§ 27-51-107. Purpose of fund; distributions from fund; use of funds distributed.

(1) On or before February 10, 1995, and the tenth day of each succeeding month thereafter, the State Tax Commission shall make payments from the Motor Vehicle Ad Valorem Tax Reduction Fund established in Section 27-51-105 to the county tax collectors for distribution to the local taxing districts as reimbursement for motor vehicle ad valorem taxes that are lost during the preceding month as a result of the ad valorem tax credit for private carriers of passengers and light carriers of property that is provided for by Section 27-51-103. The amount that each local taxing district will receive for each month under this subsection shall be determined by the State Tax Commission based on documentation provided by the tax collectors under guidelines established by the commission.

(2) On or before the twentieth day of the month that the payments from the commission under subsection (1) of this section are received, the county tax collectors shall remit the appropriate amount of such payments to the local taxing districts for which the county tax collector collects motor vehicle ad valorem taxes. When an ad valorem tax credit that is allowed to a taxpayer is not paid by the commission in the payment for the month in which such credit is allowed, the tax collector shall remit the payment for such credit to the local taxing authority on or before the twentieth day of the month that payment for such credit is received from the commission.

(3) Funds received by local taxing districts from the payments under subsection (1) of this section shall be considered to be, and shall be used in the same manner as, the proceeds of motor vehicle ad valorem taxes.

SOURCES: Laws, 1994, ch. 563, § 4, eff from and after July 1, 1994.

Editor's Note — Laws of 1994, ch. 563, § 9, eff from and after July 1, 1994, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws, before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

ATTORNEY GENERAL OPINIONS

The State Tax Commission has statutory authority to reduce the amount of the payments to the county tax collectors by what they perceive to be a loss to the Ad Valorem Tax Reduction Fund when a taxpayer turns in a tag (upon which the Legislative Tag Credit was received) for credit upon the tag for another vehicle (upon which the legislative credit will also be given). Younger, August 23, 1995, A.G. Op. #95-0523.

CHAPTER 53

Ad Valorem Taxes—Mobile Homes

SEC.
27-53-1. Definitions.
27-53-3. State Tax Commission to supply forms at highway scales; dealers to furnish names and addresses of owners of mobile homes delivered or sold in state; monthly reports to county tax collectors.
27-53-5. Registration of mobile homes with county assessor; re-registration upon relocation within county; registration required for utility service; proof of payment of use tax required to register.
27-53-7. Assessment of value and entry on mobile home rollbook.
27-53-9. Manner of assessment.
27-53-11. Computation and due date of tax; proration during first year; transfers between counties.
27-53-13. Entry of mobile home on rolls as personal property.
27-53-15. Option for classification of mobile homes as real property or personal property; conditions for classification as real property; security interests; certificates of classification and reclassification; fees.
27-53-17. Collection of delinquent taxes.
27-53-19. Removal after nonpayment of taxes and notice of sale; attachment.
27-53-21. Collection of municipal taxes when assessed as personalty; collection of taxes when assessed as realty.
27-53-23. State tax commission to prepare assessment schedule for mobile homes assessed as personalty; uniformity of assessment required; objections to assessments.
27-53-25. Tax commission to adopt rules and regulations.
27-53-27. Property exempt from chapter.
27-53-29. Penalty.
27-53-31. Credit for taxes paid on mobile home which has been totally destroyed; application and proof; perjury.
27-53-33. Credit for taxes paid on mobile home which has been totally destroyed; effective date of loss which credit applies.

§ 27-53-1. Definitions.

For the purposes of this chapter:

(a) "Manufactured home or manufactured housing" means any structure transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet and which is built on a permanent chassis and designed and constructed so as to be suitable for use for domestic, commercial or industrial purposes with or without a permanent foundation that complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 USCS, Section 5401, when such trailer is detached from a motor vehicle and parked on real estate as opposed to being towed by a self-propelled vehicle on the highways of this state. This definition includes all such structures which are parked even for a period of only a few months and excludes only those actually in transit on the highways or parked for no more than an overnight stop.

(b) "Mobile home" means any structure, transportable in one or more sections, which in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet and which is built on a permanent chassis and designed and constructed so as to be suitable for use for domestic, commercial or industrial purposes, with or without a permanent foundation and manufactured prior to June 15, 1976, when such structure is detached from a motor vehicle and parked on real estate as opposed to being towed by a self-propelled vehicle on the highways of this state. This definition includes all such structures which are parked even for a period of only a few months and excludes only those actually in transit on the highways or parked for no more than an overnight stop.

(c) "In transit home" means any such manufactured home or mobile home or similar structure or vehicle which is not parked but which is being moved from place to place over the highways and streets of the state by being supported by two (2) or more wheels by motive power not its own and which vehicle is taxed under the provisions of the motor vehicle ad valorem tax law. This definition is limited to those vehicles which are actually in transit and excludes any vehicles which are parked for more than an overnight stop.

(d) "Person" means any natural person, agency, firm, corporation, copartnership, joint stock, or other association or organization.

(e) "Manufactured home roll" means the special separate assessment roll in which all manufactured and mobile home assessments shall be kept unless and until such manufactured and mobile home shall become an improvement on real estate and placed on the land rolls.

SOURCES: Codes, 1942, § 10007-71; Laws, 1968, ch. 587, § 1; Laws, 1999, ch. 556, § 35, eff from and after July 1, 1999.

Cross References — Motor vehicle privilege taxes, see § 27-19-1 et seq.

Ad valorem taxation of house trailers, see § 27-51-5.

Levy of ad valorem tax upon mobile homes and house trailers in certain counties for county school building and repair fund, see § 37-57-115.

Regulation of mobile homes, house trailers and tourist camps, see §§ 41-25-13, 75-49-1 et seq.

JUDICIAL DECISIONS

1. In general.

With respect to competing claims on the debtor's mobile home, the county's ad valorem tax liens had priority over a secured claim because, under Mississippi law, the mobile home did not qualify as a motor vehicle that would be exempt from Miss. Code Ann. § 27-35-1 given that the definition of motor vehicle at Miss. Code Ann. § 27-51-5 expressly excludes mobile homes, which are separately defined at Miss. Code Ann. § 27-53-1. In re Riley, 550 B.R. 728 (Bankr. N.D. Miss. 2016).

ATTORNEY GENERAL OPINIONS

A recreational vehicle such as a motor home, travel trailer, truck camper mounted on the truck, or detached, or converted bus, train car, or van, can be eligible for a homestead exemption if it is determined that the vehicle falls within the definition of manufactured home or housing or mobile home and can be classified as real property, thereby placing the property on the land rolls. Martin, III, Apr. 20, 2001, A.G. Op. #01-0231.

§ 27-53-3. State Tax Commission to supply forms at highway scales; dealers to furnish names and addresses of owners of mobile homes delivered or sold in state; monthly reports to county tax collectors.

The State Tax Commission shall furnish to each official scale located on highways at the entrance to the state printed forms to be completed by the driver of all vehicles towing manufactured homes, mobile homes or in transit homes. The forms shall contain the following information about the manufactured homes, mobile homes or in transit homes being towed: (a) the name of its owner; and (b) the post office or street address to which it is to be delivered. In addition, each manufactured home, mobile home or in transit home dealer doing business in the State of Mississippi shall furnish to the State Tax Commission, at regular intervals, detailed reports which shall include the above information. From this information and other information that may come into its possession, the State Tax Commission, at monthly intervals, shall compile and furnish to each county tax collector an accurate list of all manufactured homes and mobile homes delivered to or located in that county during the preceding month. The list shall be compiled by the county and contain the following information: (a) the name of the owner; and (b) the post office or street address to which the manufactured home or mobile home was delivered.

SOURCES: Codes, 1942, § 10007-72; Laws, 1968, ch. 587, § 2; Laws, 1994, ch. 386, § 2; Laws, 1999, ch. 556, § 36, eff from and after July 1, 1999.

Cross References — State Tax Commission as meaning the Department of Revenue, see § 27-3-4.

§ 27-53-5. Registration of mobile homes with county assessor; re-registration upon relocation within county; registration required for utility service; proof of payment of use tax required to register.

(1) It shall be the duty of the owner of a manufactured home or mobile home, not later than seven (7) days, Saturdays, Sundays and legal holidays excluded, after the date of purchase or entry into the county where the manufactured home or mobile home is located, to register such manufactured home or mobile home with the tax collector of the county where the manufactured home or mobile home is located. If a certificate of title has been issued or

applied for concerning the manufactured home or mobile home, the original certificate of title or a copy of the application shall be presented to the tax collector at the time of the registration. The registration application for such manufactured home or mobile home shall contain the following information: name and address of owner, length and width of the manufactured home or mobile home, serial number of manufactured home or mobile home, make of manufactured home or mobile home, date of purchase, present market value, and address where manufactured home or mobile home is located if other than the address of the owner. At the time that an owner registers his manufactured home or mobile home, and before a registration certificate may be issued by the tax collector, the owner of the manufactured home or mobile home shall pay a registration fee of One Dollar ($1.00) to the county tax collector and provide proof of payment of the previous year's taxes unless the manufactured home or mobile home was purchased from a licensed dealer. It is also the duty of the owner of the manufactured home or mobile home to reregister his manufactured home or mobile home with the tax collector within seven (7) days after the relocation of such manufactured home or mobile home from one (1) location in the county to another location in the county in order that there will always be on file with the tax collector the current address of such manufactured home or mobile home.

(2) It shall be the duty of every manufactured home or mobile home owner to provide proof of registration in the county in which the manufactured home or mobile home is located and at the address at which utility service is to be provided, as required by subsection (1), to each utility company whose service is procured by the owner before the utility company shall connect its services. For purposes of this section, "utility" shall mean and include water, gas, electric and telephone services, including such utilities as are owned and operated by municipalities.

(3) No utility company shall connect, provide or transfer service without receiving and recording the number of the current registration certificate issue for the manufactured home or mobile home at the address where service will be connected, provided or transferred.

(4) It shall be the duty of every manufactured home or mobile home owner subject to the use tax levy in Section 27-67-5 to provide proof of payment of such tax prior to the time of registration. If the manufactured home or mobile home has been registered in another county in this state, then the owner shall only need to show proof of such registration.

(5) Every utility company, in its discretion, may furnish to the county tax collector, upon request, the names and addresses of all manufactured home or mobile home customers to whom the utility company provides a service.

SOURCES: Codes, 1942, § 10007-73; Laws, 1968, ch. 587, § 3; Laws, 1977, ch. 364; Laws, 1988, ch. 377, § 1; Laws, 1990, ch. 497, § 1; Laws, 1992, ch. 454, § 1; Laws, 1994, ch. 386, § 1; Laws, 1999, ch. 556, § 37; Laws, 2002, ch. 378, § 1, eff from and after passage (approved Mar. 18, 2002.)

Cross References — County assessors and tax collectors, see § 27-1-1 et seq.

Motor vehicle registration and license taxes, see § 27-19-1 et seq.

§ 27-53-7. Assessment of value and entry on mobile home rollbook.

At the time of registration, the value of the manufactured home or mobile home shall be assessed and entered by the tax collector on the manufactured home roll book.

SOURCES: Codes, 1942, § 10007-74; Laws, 1968, ch. 587, § 4; Laws, 1994, ch. 386, § 3; Laws, 1999, ch. 556, § 38, eff from and after July 1, 1999.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation §§ 667, 668.

CJS. 84 C.J.S., Taxation §§ 568-604.

§ 27-53-9. Manner of assessment.

Manufactured homes and mobile homes shall be assessed in the same manner as property of like value is assessed on the land rolls or manufactured home rolls on which they appear.

SOURCES: Codes, 1942, § 10007-75; Laws, 1968, ch. 587, § 5; Laws, 1999, ch. 556, § 39, eff from and after July 1, 1999.

Cross References — Assessment of lands, see § 27-35-49.

ATTORNEY GENERAL OPINIONS

If a county authorizes the acceptance of partial payments of ad valorem taxes on real property by order in the minutes, this order applies to ad valorem taxes on mobile homes, and if the county adopts a policy that no partial payments of ad valorem taxes on real property will be authorized, this order applies to ad valorem taxes on mobile homes; regardless of what policy a county adopts on acceptance of partial payments of ad valorem taxes, manufactured homes and mobile homes are assessed in the same manner as property of like value is assessed on the land rolls or manufactured home rolls on which they appear. Belk, Jr., Apr. 13, 2001, A.G. Op. #01-0184.

§ 27-53-11. Computation and due date of tax; proration during first year; transfers between counties.

The ad valorem tax on manufactured homes and mobile homes shall be computed from the date of registration but not be due and payable until ninety (90) days thereafter. All ad valorem taxes for this first year's registration shall be prorated from the date of registration to the end of the calendar year. Thereafter, all ad valorem taxes on manufactured homes and mobile homes shall be due and payable annually; provided, however, that all ad valorem taxes on manufactured homes and mobile homes that have been classified as real property shall be due and payable in the same manner as prescribed for other real property. No additional ad valorem taxes are due on a manufactured home or mobile home that is brought into a county from another county in this state if the owner shows proof of payment of ad valorem taxes in the other county.

SOURCES: Codes, 1942, § 10007-76; Laws, 1968, ch. 587, § 6; Laws, 1988, ch. 377, § 2; Laws, 1995, ch. 412, § 1; Laws, 1999, ch. 556, § 40, eff from and after July 1, 1999.

Cross References — When taxes are due, payable and collectible, see § 27-41-1.

Notice upon default of payment of ad valorem taxes upon personal property, see § 27-41-101.

Authority of assessor to file civil suit if tax not paid when due as provided in this section, see § 27-53-17.

ATTORNEY GENERAL OPINIONS

When a landowner acquires a mobile home and at the time of registration, also certifies the mobile home making it real property, it becomes subject to taxation on January 1 of the following year. Johnson, July 29, 2005, A.G. Op. 05-0359.

§ 27-53-13. Entry of mobile home on rolls as personal property.

The manufactured home or mobile home owner who does not own the land on which his manufactured home or mobile home is located must declare his manufactured home or mobile home to be personal property at the time of registration and the county tax collector shall enter it on the manufactured home rolls as personal property.

SOURCES: Codes, 1942, § 10007-77; Laws, 1968, ch. 587, § 7; Laws, 1994, ch. 386, § 4; Laws, 1999, ch. 556, § 41, eff from and after July 1, 1999.

Cross References — Assessment of personal property, generally, see § 27-35-15.

RESEARCH REFERENCES

Am Jur. 72 Am. Jur. 2d, State and Local Taxation § 659 et seq.

CJS. 84 C.J.S., Taxation § 530 et seq.

§ 27-53-15. Option for classification of mobile homes as real property or personal property; conditions for classification as real property; security interests; certificates of classification and reclassification; fees.

The manufactured homeowner or mobile homeowner who owns the land on which the manufactured home or mobile home is located shall have the option at the time of registration of declaring whether the manufactured home or mobile home shall be classified as personal or real property. If the manufactured home or mobile home is to be classified as real property, then the wheels and axles must be removed and it must be anchored and blocked in accordance with the rules and procedures promulgated by the Commissioner of Insurance of the State of Mississippi. After the wheels and axles have been removed and the manufactured home or mobile home has been anchored and blocked in accordance with such rules and procedures, the manufactured home or mobile home shall be considered to have been affixed to a permanent foundation. The county tax assessor shall then enter the manufactured home or mobile home on the land rolls and tax it as real property on the land on which it is located from the date of registration. At such time, the county tax assessor shall issue a certificate certifying that the manufactured home or mobile home has been classified as real property. Such certificate shall contain the name of the owner of the manufactured home or mobile home, the name of the manufacturer, the model, the serial number and the legal description of the real property on which the manufactured home or mobile home is located. The county tax assessor shall cause such certificate to be filed in the land records of the county in which the property is situated. After filing, the chancery clerk shall forward the certificate to the owner. For issuance of the certificate, a fee of Twelve Dollars ($12.00) shall be collected by the county tax assessor, Ten Dollars ($10.00) of which shall be retained by the assessor and Two Dollars ($2.00) of which shall be forwarded to the chancery clerk for filing the certificate. Upon the filing of the certificate in the land records, the manufactured home or mobile home shall then be considered real property for purposes of ad valorem taxation. The filing of such a certificate shall not affect the validity or priority of any existing perfected lien. If a manufactured home or mobile home is classified as real property and no certificate of title was required to be issued or issued for such property pursuant to Chapter 21, Title 63, Mississippi Code of 1972, a security interest may be obtained therein through the use of a mortgage or deed of trust describing both the manufactured home or mobile home and the land on which the manufactured home or mobile home is located. For a manufactured home or mobile home classified as personal property for which no certificate of title was required to be issued or issued pursuant to the provisions of Chapter 21, Title 63, Mississippi Code of 1972, the perfection of a security interest therein shall be governed by the provisions of Chapter 9, Title 75, Mississippi Code of 1972. Regardless of whether a manufactured home or mobile home for which a certificate of title was required to be issued or issued pursuant to the provisions of Chapter 21, Title 63, Mississippi Code of 1972, is classified as real property or is classified as personal property, the perfection of a security interest therein shall be governed by the provisions of Chapter 21, Title 63, Mississippi Code of 1972. A manufactured home or mobile home that has been classified as personal property may be reclassified as real property at the option of its owner if the owner obtains a certification from the tax assessor as provided in this section. Conversely, a manufactured home or mobile home that has been classified as real property may be reclassified for purposes of ad valorem taxation as personal property at the option of its owner if there is no lien against it and if the owner notifies the county tax assessor to reassess it and have the county tax collector enter it upon the manufactured home rolls. Upon a request for reclassification, if no certificate of title was required to be issued or issued for the manufactured home or mobile home, there must be no lien against it and the property owner shall present proof satisfactory to the tax assessor that there are no liens outstanding on the property. If there is a lien against the manufactured home or mobile home, the county tax assessor shall refuse to allow the county tax collector to reclassify it as personal property until the lien has been released. If a certificate of title as provided in Chapter 21, Title 63, Mississippi Code of 1972, has been issued, the manufactured home or mobile home may be reclassified for ad valorem taxation purposes regardless of whether a lien exists on the certificate o f title. Upon such request, the tax assessor may issue a certificate cancelling the classification of the manufactured home or mobile home as real property and cause such certification to be filed in the land records of the county in which the property is situated. For issuance of the certificate, a fee of Twelve Dollars ($12.00) shall be collected by the county tax assessor, Ten Dollars ($10.00) of which shall be retained by the assessor and Two Dollars ($2.00) of which shall be forwarded to the chancery clerk for filing the certificate.

SOURCES: Codes, 1942, § 10007-78; Laws, 1968, ch. 587, § 8; Laws, 1971, ch. 359, § 1; Laws, 1982, ch. 369; Laws, 1994, ch. 386, § 5; Laws, 1999, ch. 556, § 42, eff from and after July 1, 1999.

Joint Legislative Committee Note — Pursuant to Section 1-1-109, the Joint Legislative Committee on Compilation, Revision and Publication of Legislation corrected a typographical error in this section. The words "have the county tax collector" were changed to "allow the county tax collector". The Joint Committee ratified the correction at its December 3, 1996, meeting, and the section has been reprinted in the supplement to reflect the corrected language.

Cross References — Security interests under Uniform Commercial Code, see § 75-9-101 et seq.

JUDICIAL DECISIONS

1. Requirements not met.

In order to obtain title on a mobile home, it had to be considered part of the real property when a deed of trust was signed; the requirements of this section were not met because there was no evidence that the mobile home's wheels and axles had been removed or that it had been attached to a permanent foundation. Moreover, there was no evidence that a certification of the mobile home as real property had been entered with a county tax assessor; the deed encompassed the land together with all improvements, appurtenances, and fixtures, but no mention was made of the mobile home. O'Neal v. Ketchum, 141 So. 3d 45 (Miss. Ct. App. 2014).

ATTORNEY GENERAL OPINIONS

This section does not permit a tax assessor to refuse to reclassify mobile homes from personal property to real property if there are delinquent ad valorem taxes due upon the mobile home. Blackledge, April 16, 1999, A.G. Op. #99-0183.

Language of this section requires that certificates issued from 1995 forward (as well as years prior to 1995) be recorded in the county land records, and would likewise be applicable whether the certificates were issued by the tax assessor or the tax collector. Miller, Apr. 8, 2005, A.G. Op. 05-0131.

Section 27-53-15 prescribes certain duties to the tax assessor, which duties are not prescribed to the tax collector, with regard to ad valorem taxes of mobile homes and manufactured homes that are classified as real property. Accordingly, those duties assigned to the tax assessor must be performed by the assessor. Miller, Apr. 8, 2005, A.G. Op. 05-0131.

§ 27-53-17. Collection of delinquent taxes.

(1)(a) Except as otherwise provided in Section 27-41-2, it shall be the duty of the tax collector of the county in which the manufactured home or mobile home is registered and assessed to collect the ad valorem taxes thereon. In cases where the manufactured home or mobile home is assessed on the land rolls, the penalty for nonpayment or delinquency of taxes shall be the same as is prescribed by law in regard to real estate. Except as otherwise provided in this section, in the case of all other manufactured homes or mobile homes, if the ad valorem tax is not paid within ninety (90) days after it becomes due and payable as provided by Section 27-53-11, the tax collector shall have the authority to file a civil suit in order to collect these taxes. Suits to collect delinquent manufactured home or mobile home taxes may be combined and included in one or more civil suits, the costs of which (including publication fees and like necessary ex penses) shall be assessed pro rata among the delinquent taxpayers party to a suit as part of the judgment.

(b) After taking all possible legal action, the tax collector shall submit a report of uncollected manufactured home or mobile home taxes to the board of supervisors. Such report shall be verified by the affidavit of the collector, that he has made, in person or by deputy, a legal demand for taxes due and that the taxpayers mentioned in the report have failed to pay their taxes. Separate lists of the delinquents shall be made for each election district and for each city, town and village.

(c) The board shall allow the collector a credit for those taxes which it is satisfied may remain uncollected without the default of the collector, and no more. A list of the allowances shall be made out and certified by the clerk and transmitted to the Auditor of Public Accounts, and shall be credited to the collector in his settlement with the auditor and chancery clerk.

(2) As an alternative to the authority granted under this section to county tax collectors to file suit for the collection of delinquent manufactured home or mobile home taxes, the board of supervisors of any county, in its discretion, may contract in the manner provided in Section 19-3-41 with a private attorney or private collection agent or agents for the collection of delinquent ad valorem taxes on manufactured homes or mobile homes that are entered as personal property on the manufactured home rolls.

(3) As an alternative to the method of collecting delinquent taxes provided for in this section, the method provided for in Sections 27-41-101 through

27-41-109 may, in the discretion of the tax collector, be used to collect delinquent ad valorem taxes on manufactured homes or mobile homes classified as personal property.

SOURCES: Codes, 1942, § 10007-79; Laws, 1968, ch. 587, § 9; Laws, 1985, ch. 425, § 6; Laws, 1990, ch. 497, § 2; Laws, 1993, ch. 513, § 8; Laws, 1993, ch. 540, § 10; Laws, 1995, ch. 412; Laws, 1995, ch. 496, § 3; Laws, 1996, ch. 394, § 1; Laws, 1999, ch. 556, § 43, eff from and after July 1, 1999.

Editor's Note — Section 7-7-2, as added by Laws of 1984, Chapter 488, § 90, and amended by Laws of 1985, Chapter 455, § 14 and Laws of 1986, Chapter 499, § 1, provided, at subsection (2) therein, that the words "state auditor of public accounts," "state auditor", and "auditor" appearing in the laws of the state in connection with the performance of auditor's functions transferred to the state fiscal management board, shall mean the state fiscal management board whenever they appear. Thereafter, Laws of 1989, Chapter 532, § 2, amended § 7-7-2 to provide that the words "State Auditor of Public Accounts," "State Auditor" and "Auditor" appearing in the laws of this state in connection with the performance of Auditor's functions shall mean the State Fiscal Officer whenever they appear. Subsequently, Laws of 1989, ch. 544, § 17, effective July 1, 1989, and codified as § 27-104-6, provides that wherever the term "State Fiscal Officer" appears in any law it shall mean "Executive Director of the Department of Finance and Administration".

Laws of 1993, ch. 513, § 9, effective July 1, 1993, provides as follows:

"SECTION 9. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Laws of 1993, ch. 540, § 11, effective October 1, 1993, provides as follows:

"SECTION 11. Nothing in this act shall affect or defeat any claim, assessment, appeal, suit, right or cause of action for taxes due or accrued under the ad valorem tax laws before the date on which this act becomes effective, whether such claims, assessments, appeals, suits or actions have been begun before the date on which this act becomes effective or are begun thereafter; and the provisions of the ad valorem tax laws are expressly continued in full force, effect and operation for the purpose of the assessment, collection and enrollment of liens for any taxes due or accrued and the execution of any warrant under such laws before the date on which this act becomes effective, and for the imposition of any penalties, forfeitures or claims for failure to comply with such laws."

Cross References — Department of Revenue, see § 27-3-1 et seq.

Action to recover tax, penalty and interest, see § 27-35-5.

Sale of land for taxes, see § 27-41-55 et seq.

Redemption from tax sales generally, see § 27-45-1 et seq.

Report of motor vehicle ad valorem taxes, see § 27-51-29.

Refund of taxes, see § 27-73-1 et seq.

ATTORNEY GENERAL OPINIONS

Although there is no specific provision for sale of mobile home for delinquent taxes, tax collector may execute on judgment obtained just as in other civil judgments. Barrett, June 30, 1993, A.G. Op. #93-0353.

If a county obtains a judgment lien for mobile home ad valorem tax delinquencies, and the mobile home does not sell when advertised for public sale, the county may execute on the judgment in a manner similar to other civil judgments and may gain possession and control over the mobile home and attempt to sell it when sale conditions are more favorable during the period of the lien. Beam, July 18, 1997, A.G. Op. #97-0176.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 121-122.

72 Am. Jur. 2d, State and Local Taxation § 737 et seq.

CJS. 27 C.J.S., District and Prosecuting Attorneys §§ 67, 68.

84 C.J.S., Taxation §§ 1109, 1112 et seq.

§ 27-53-19. Removal after nonpayment of taxes and notice of sale; attachment.

Removal of a manufactured home or mobile home after the same has been assessed and such ad valorem tax has not been paid and notice of sale has been served shall be prima facie evidence of an intent on the part of the manufactured or mobile homeowner to avoid payment of taxes, and the county tax collector shall attach the property immediately.

SOURCES: Codes, 1942, § 10007-80; Laws, 1968, ch. 587, § 10; Laws, 1999, ch. 556, § 44, eff from and after July 1, 1999.

Cross References — Attachment in chancery against nonresident, absent or absconding debtors, see § 11-31-1 et seq.

Attachment at law against debtors, see § 11-33-1 et seq.

Persons about to leave county or remove property generally, see §§ 27-35-161, 27-41-45.

Crime of refusing or failing to render property for tax assessment, see § 97-7-1.

§ 27-53-21. Collection of municipal taxes when assessed as personalty; collection of taxes when assessed as realty.

The county tax collector is authorized to collect the municipal as well as county tax on manufactured homes or mobile homes not included in the land rolls and return the municipal tax to the municipality, retaining the same commission as is allowed for collection of municipal tax on motor vehicles. The tax on manufactured homes or mobile homes included in the land rolls shall be collected by the county and city tax collectors as on all other realty.

SOURCES: Codes, 1942, § 10007-81; Laws, 1968, ch. 587, § 11; Laws, 1999, ch. 556, § 45, eff from and after July 1, 1999.

Cross References — Municipal taxes, see § 21-33-1 et seq.

RESEARCH REFERENCES

ALR. Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation. 7 A.L.R.4th 1016.

§ 27-53-23. State tax commission to prepare assessment schedule for mobile homes assessed as personalty; uniformity of assessment required; objections to assessments.

Manufactured homes and mobile homes considered as personal property shall be assessed uniformly according to value and such assessed value shall be determined by an assessment schedule which shall be prepared and made of record by the State Tax Commission and shall be certified to each county tax assessor and tax collector as the official manufactured and mobile home assessment schedule which shall be used by the proper officials in assessing manufactured home or mobile home ad valorem taxes for the year.

In no instance may any taxing agency, under authority of this chapter, either reduce or increase for the purpose of ad valorem taxation the existing value of any manufactured home or mobile home from that shown by the aforesaid assessment schedule.

Any person objecting to the assessment schedule as it affects the assessed value of his manufactured home or mobile home as personal property may proceed as is provided for under Section 27-51-23, Mississippi Code of 1972. Any person objecting to the real property assessment as it affects the assessed value of his manufactured home or mobile home may proceed as in such cases made and provided by law as pertains to real property.

SOURCES: Codes, 1942, § 10007-82; Laws, 1968, ch. 587, § 12; Laws, 1999, ch. 556, § 46, eff from and after July 1, 1999.

Cross References — Department of Revenue, see § 27-3-1 et seq.
State Tax Commission as meaning the Department of Revenue, see § 27-3-4.
Objections to assessments generally, see § 27-35-89.

§ 27-53-25. Tax commission to adopt rules and regulations.

The state tax commission shall adopt and issue rules and regulations, not inconsistent with this chapter, as to the duties of all officials, boards and officers in the administration of this law, and such other rules and regulations not inconsistent with this chapter, as the state tax commission shall deem necessary. Such rules and regulations shall be observed by such officials, boards and officers in all respects and in the performance of any and all duties imposed and powers granted by this chapter. The tax commission shall also prescribe and furnish labels, tax receipt books and other forms necessary for the proper administration of this chapter. The tax commission shall also prescribe the method of attaching the label to the towing end of the mobile home.

SOURCES: Codes, 1942, § 10007-83; Laws, 1968, ch. 587, § 13, eff from and after September 1, 1968.

§ 27-53-27. Property exempt from chapter.

The following are exempt from the taxes authorized by this chapter:

(a) In transit homes subject to the motor vehicle ad valorem tax law.

(b) Any manufactured home or mobile home located on land which is owned by the same person owning and occupying said manufactured home or mobile home which was assessed on the land rolls at the effective date of this chapter.

(c) Manufactured homes or mobile homes owned by and/or in the possession of a dealer as merchandise.

(d) Any nonresident member of the armed forces of the United States of America owning and living in a manufactured home or mobile home within the state in compliance with military orders.

SOURCES: Codes, 1942, § 10007-84; Laws, 1968, ch. 587, § 14; Laws, 1999, ch. 556, § 47, eff from and after July 1, 1999.

Cross References — Property exempt from taxation generally, see § 27-31-1.
Ad valorem tax on house trailers, see § 27-51-5.

ATTORNEY GENERAL OPINIONS

This section exempts from ad valorem taxation a mobile home located in Mississippi and owned by a non-resident of the state who is both in the military and stationed in the state pursuant to military orders. Smith, February 12, 1999, A.G. Op. #99-0054.

RESEARCH REFERENCES

Am Jur. 71 Am. Jur. 2d, State and Local Taxation §§ 232-234 et seq.

CJS. 84 C.J.S., Taxation § 252 et seq.

§ 27-53-29. Penalty.

Any such wilful violation of this chapter shall be punishable by a fine of not more than Twenty-Five Dollars ($25.00).

SOURCES: Codes, 1942, § 10007-86; Laws, 1968, ch. 587, § 16, eff from and after September 1, 1968.

§ 27-53-31. Credit for taxes paid on mobile home which has been totally destroyed; application and proof; perjury.

If any manufactured home or mobile home on which the ad valorem taxes prescribed in this chapter have been paid shall be totally destroyed by fire, tornado, flood or acts of providence, then the owner of such manufactured home or mobile home, upon filing a petition and submission of sufficient proof to the tax collector, may be credited with the amount of the ad valorem taxes on the proportional part of the taxable year remaining, less ad valorem taxes accruing on the salvage price, if any, in calculating the amount of ad valorem taxes due on any replacement for such a manufactured home or mobile home. In no event, however, shall such person claiming credit under this provision be entitled to a cash refund.

In order to obtain benefit of this credit, such person must submit proof supported by affidavit of three (3) reputable citizens that such manufactured home or mobile home has been totally destroyed and a statement must be made as to the estimated amount of salvage value remaining. The application for this credit and the three (3) supporting affidavits must be notarized by an officer who has legal authority to notarize such instruments.

Any person who makes or swears to a false statement or makes or swears to a statement of facts without personal knowledge of such facts, in any connection with an adjustment claim as referred to above, shall be guilty of perjury and upon conviction shall be punished as now provided by law.

SOURCES: Laws, 1989, ch. 478, § 1; Laws, 1999, ch. 556, § 48, eff from and after July 1, 1999.

Cross References — Effective date of the loss to which the credit applies, see § 27-53-33.

Imposition of standard state assessment in addition to all court imposed fines or other penalties for any misdemeanor or violations, see § 99-19-73.

§ 27-53-33. Credit for taxes paid on mobile home which has been totally destroyed; effective date of loss which credit applies.

Credit allowed against ad valorem taxes under Section 27-53-31 shall apply only to claims arising on or after July 1, 1989.

SOURCES: Laws, 1989, ch. 478, § 2, eff from and after July 1, 1989.

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